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DIVISION II

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STATE OF WASHINGTON

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No. 33248-5-II

☐ SUPREME COURT

☒ COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

James M. and Shannon Young, *Appellants*

v.

Judith Young, *Respondent*.

- ☐ Petition for Review
 - ☒ Appellant's Opening Brief
 - ☐ Respondent's Brief
 - ☐ Reply Brief of Appellant
 - ☐ Other: _____
-
-

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I. INTRODUCTION

In this unjust enrichment case, the trial court found after a bench trial that Jim and Shannon Young were entitled to recover for work that they performed, over more than six years, which substantially improved Judith Young's property. Jim and Shannon Young challenge the trial court's decision to arbitrarily limit its valuation of their work to less than its undisputed fair market value.

The trial court acknowledged in its conclusions of law that the law required it to base its award to Jim and Shannon Young on their work's market value, or the amount by which their work enhanced the fair market value of the property, whichever was greater:

In an unjust enrichment case, the appropriate measure of damages is generally the greater of: (1) the cost the owner would incur to obtain the same services from a third party or (2) the amount by which the services provided have increased the value of the property

See Appendix A (CoL 5).

During trial, Jim and Shannon Young presented evidence addressing each of these measures of their recovery. First, Jim and Shannon Young submitted the testimony of Michael Summers, a professional cost engineer, who prepared a detailed estimate showing what it would have cost Judith

Young to hire a contractor to perform the work that Jim and Shannon Young in fact performed. Appendix C (Tr. Ex. 87). Mr. Summers testified that it would have cost Judith Young \$760,382.00 to hire a contractor to perform the work. *Id.* Judith Young presented no contrary testimony.

The trial court specifically found Mr. Summers testimony, opinions, and cost estimate to be accurate and credible. Appendix A (FoF 157). The trial court incorporated Mr. Summers' cost estimate by reference into its findings of fact. Appendix A (FoF 76-77).

In addition, Jim and Shannon Young presented the testimony of Jan Henry, the realtor who had originally sold the ranch property to Judith Young. Jan Henry testified that the property was worth the \$1,050,000.00 Judith Young paid for when she originally purchased it in 1998. She testified that the property was worth between \$2.2 and \$2.5 million today. Finally, she testified that all but \$300,000.00 to \$400,000.00 of that increase was the result of Jim and Shannon Young's work on the property. Appendix A (FoF 160-162). See also Tr. Ex. 88-89. In other words, Jim and Shannon Young, through their more than six years of work, enhanced the value of Judith Young's property by \$750,000.00 to \$1,150,000.00.

The trial court specifically found Jan Henry's testimony and opinions to be credible. Appendix A (FoF 163). Although Judith Young presented the testimony of a competing expert, the trial court specifically found his testimony not to be credible, and rejected it. (FoF 167).

Based on the law, and based on the expert testimony accepted by the trial court, the trial court should have valued Jim and Shannon Young's work as being worth at least \$760,382.00. However, the trial court did not do this. Instead, the trial judge applied a different measure of damages. The trial court arbitrarily limited its valuation only to its approximation of the costs Jim and Shannon Young had incurred doing the work.

As a result, the trial court valued Jim and Shannon Young's work at only \$501,866.00. The trial court thereby unjustly enriched Judith Young by at least \$250,000.00.

Jim and Shannon Young challenge the trial court's decision to ignore what the trial court itself found to be the applicable law. The trial court should have valued the work that Jim and Shannon Young had performed on the ranch property as being worth at least \$760,382.00. This Court should remand to the trial court with instructions that the trial court enter a judgment based on at least that valuation.

II. STATEMENT OF FACTS

A. The Parties.

Judith Young is Jim Young's aunt. FoF 8. Judith Young is independently wealthy. FoF 3. She is the beneficiary of trusts established by her grandfather and mother worth many millions of dollars. RP 94-95. See also Tr. Ex. 70-72.

Judith Young lives by herself, together with about a dozen otters and many other animals, in a mobile home on a 200 acre piece of property in rural Georgia. FoF 19. Judith Young spends her time taking care of her otters and other animals. FoF 2, 15, 19. Because of her need to personally take care of her otters and other animals, she has left her home overnight on only three occasions since 1993. FoF 16.

Jim Young, Judith's nephew, is a licensed and bonded contractor. FoF 5. He cuts timber, clears and grades land, and constructs concrete slabs for a living. *Id.* Jim and Shannon Young have four children. FoF 7. Shannon Young is taking classes to earn a nursing certificate. RP 460.

B. The "Ranch Property."

In June 1998, Judith purchased the "ranch property". FoF 47-48, 54-59. See also Tr. Ex. 56-64. The ranch property is located in South Thurston County. It is about 186 acres in size. FoF 60.

When Judith Young bought the ranch property, it had not been lived in or maintained for about 10 years. As a result, the land and the many outbuildings on it were in poor, run-down condition. FoF 27-33.

Judith Young purchased the ranch property without ever having seen it herself. FoF 54. Judith Young paid \$1,050,000.00 to purchase the ranch property, which was the property's fair market value. FoF 57-58, 160.

Judith Young purchased the ranch property because she wanted to move herself, her animals and otters from Georgia to Washington State. FoF 24-25, 37-42. Judith had asked Jim and Shannon Young to, and Jim and Shannon Young did, locate this property and handle the purchase of it for her. FoF 37-42, 48-49, 55, 61-62.

C. Jim and Shannon Young spend more than six years working to improve the “ranch property.”

Judith Young also asked Jim and Shannon Young to do the work necessary to get the property ready for her to move herself, her otters and her many other animals onto it. FoF 43-46, 62-63, 168. In order to facilitate Jim Young’s work, and with Judith Young’s knowledge and consent, Jim Young’s name was put on the title to the property. FoF 61-62.

Between 1998 and 2004, Jim and Shannon Young spent substantial amounts of their time, money and energy working on and improving the ranch property. FoF 72, 74-85, 130-132. Judith Young was at all times aware of the work that Jim and Shannon Young were performing at the ranch property. FoF 87-92, 169.

For example, Jim Young demolished an old derelict farm house and two other old buildings that had been left on the property. See FoF 75-76, (finding that Trial Exhibit 87, Michael Summers’ cost estimate, “accurately describes the work Jim and Shannon Young performed on the property,” and incorporating that cost estimate by reference into the trial court’s findings of fact); Appendix C (Tr. Ex. 87) (line item 24-26). Jim Young removed two old manure lagoons that had been left on the property from when it had been used as a dairy farm. *Id.* (line item 27). Jim cleared 40 acres of the property.

Id. (line item 32). Jim removed and replaced over 20,000 lineal feet of fencing, installed five new gates, and repaired others. *Id.* (line items 33, 35).

Jim and Shannon Young also did substantial amounts of work on the many old farm outbuildings on the property. For example, Jim and Shannon Young replaced the roofs on almost all the outbuildings. *Id.* (line items 23, 28, 30, 31). Jim and Shannon Young substantially repaired the largest of the barns. *Id.* (line item 30). Jim and Shannon Young repaired several of the other outbuildings. *Id.* (line items 20, 21, 23, 28, and 29). They also began remodeling a smaller barn into a guest house. *Id.* (line item 31).

Jim and Shannon Young also extensively remodeled and upgraded the ranch house itself. FoF 130-132; Tr. Ex. 87 (line items 1-19). They replaced the underflooring, flooring, and carpet and/or tile throughout most of the house. *Id.* They repaired and/or replaced all the sheetrock that had been badly damaged because the roof had leaked while the house had been left vacant. *Id.* They replaced the furnace and most of the appliances. Tr. Ex. 87 (line items 1, 2, 7). They completely remodeled the kitchen, installing professional grade appliances. *Id.* (line item 11).

Jim and Shannon Young either owned or obtained the heavy equipment, machinery, and tools that were used to improve the ranch

property. FoF 80. Jim and Shannon Young also paid for, or bartered for, the labor (other than their own) and materials used in the work. FoF 79. To the extent that others did the work, Jim and Shannon Young supervised their labor. *Id.*

All of the work which Jim and Shannon Young performed on the ranch property was of good and workmanlike quality or better. It was of at least the quality or better than what Judith Young would have obtained had she hired a contractor on the market to perform the work. FoF 78.

Jim and Shannon Young did all this work in the belief that Judith Young would compensate them for it. Originally, Judith Young told Jim Young that she would pay for the work by purchasing another property for Jim and Shannon Young near her property. FoF 53. Beginning in 2001, after Judith Young changed her mind about moving to Washington State, Jim and Shannon continued to work on the property in the good faith belief that they had reached an agreement with Judith Young to develop the property as a cattle ranch, of which they would be part owners. FoF 118. See also FoF 168-71.

D. The Lawsuit.

In May 2003, Judith Young filed this lawsuit against Jim and Shannon Young. FoF 147-148; CP 6-15. In her complaint, Judith Young asked the Court to strip Jim Young's name from the title and to eject Jim and Shannon Young from the ranch property. *Id.* Jim and Shannon Young filed an answer in which they asserted a counterclaim to recover, under the theory of unjust enrichment, for the work they had performed to improve the property. FoF 149-150; CP 16-27.

In September 2004, Jim and Shannon Young asked the trial court to grant them summary judgment on their unjust enrichment claim. FoF 151; CP 138 *et seq.* Jim and Shannon Young submitted a brief which cited case law that held that the measure of damages in an unjust enrichment case is the greater of: (1) the amount it would have cost the owner to have another perform the work; or (2) the amount by which the work has enhanced the value of the property. CP 171-76. In support of that motion, they also submitted the Declaration of Michael Summers, a professional cost engineer, who had determined that a general contractor would have charged Judith Young \$760,382.00 in year 2000 dollars, to perform the work that Jim and

Shannon Young had actually performed to improve the ranch property. CP 215-227. See Appendix C (Michael Summer's cost estimate).

Judith Young filed a cross-motion. CP 28-137. But she did not dispute Jim and Shannon Young's statement of the law governing the measure of recovery for unjust enrichment. See CP 30-65; 499-506. And Judith Young submitted no evidence to contradict Michael Summers' testimony. *Id.*

Despite Judith Young's complete failure to submit any law or evidence pertaining to this issue, the trial court denied Jim and Shannon Young's motion for summary judgment. The trial court ordered the parties to proceed to trial. FoF 151; CP 572-574.

The trial occurred in March 2005. FoF 154. During his opening statement, Judith Young's counsel declared that Judith Young would not submit evidence contradicting the amount that Jim and Shannon were seeking to recover:

In terms of damages, Mr. Edwards has repeatedly made the point already that we have not responded to their legal argument, we have not responded to Mr. Summers' estimates. We have not responded because that is not the turf upon which this case will be fought.

RP 59.

During trial, Michael Summers offered the same testimony that he had offered in support of Jim and Shannon Young's summary judgment motion: that it would have cost Judith Young \$760,382.00 to hire a contractor to perform the work that Jim and Shannon Young had performed. RP 418. See also FoF 155-156; RP 382-457. Mr. Summers further testified that this is what it would have cost Judith Young to have hired a contractor to do the work in 2000 dollars. RP 419. Mr. Summers testified that his estimate would have been 20% to 25% higher (i.e., \$912,458.40 to \$950,477.50) if he had been asked to express it in current dollars. *Id.*

Jim and Shannon Young also offered the testimony of Jan Henry, the realtor who had sold the property to Judith Young. Ms. Henry testified that in 1998, the property had a fair market value equivalent to the \$1,050,000.00 Judith Young paid for it. FoF 58, 159-160. See also Tr. Ex. 88. Ms. Henry testified that the property was worth between \$2.2 and \$2.5 million today. FoF 161. See Tr. Ex. 89. And, Ms. Henry testified that all but \$300,000.00 or \$400,000.00 of the increase in the value was attributable to the work performed by Jim and Shannon Young. FoF 162; RP 556-557.

In other words, Ms. Henry's opinion was that only \$300,000.00 to \$400,000.00 of the increase in value of the property between 1998 and 2004

was attributable to the natural increase in the value of real estate over time. The balance of the \$750,000.00 to \$1,150,000.00 increase in the value of the property was the result of the work done to improve it by Jim and Shannon Young. The trial court found, as a fact, that Ms. Henry's opinions and testimony were accurate and credible. FoF 163.

On April 15, 2005, the trial court entered formal findings of fact, conclusions of law, and a judgment. Appendix A and B. The trial court found, as a fact, that Judith Young had asked Jim and Shannon Young to do all this work to improve her property, and that Jim and Shannon Young had done all the work with the good faith expectation that they would be compensated by Judith Young. FoF 43-46, 52-53, 72, 74-75, 77-92, 117-119. Therefore, the trial court concluded that, in order to prevent Judith Young's unjust enrichment, Jim and Shannon Young were entitled to recover for the work that they had done. CoL 2-4.

The trial court also correctly articulated the "generally appropriate" measure of Jim and Shannon Young's recovery:

5. In an unjust enrichment case, the appropriate measure of damages is generally the greater of: (1) the cost the owner would incur for the property owner to obtain the same services from a third party; and (2) the amount by which the services provided have increased the value of the property.

However, the trial court adopted a different measure to value the work that

Jim and Shannon Young had performed:

6. However, under the particular circumstances of this case, the Court declines to adopt that measure of damages.

...

A. Michael Summers, the cost engineer, whose testimony the Court has generally accepted as credible, testified that it would have cost Judith Young approximately \$760,382.00 in calendar year 2000 dollars to hire a general contractor to perform the same work Jim and Shannon Young in fact performed to improve her property, as set forth in his cost estimate (Defendants' Tr. Ex. 87).

B. Under the circumstances of this case, the Court concludes that Jim and Shannon Young should not be entitled to recover the general contractor's costs identified on page 9 of Mr. Summers' estimate (including mobilization/demobilization costs; the cost of providing supervision, tools and general equipment; the cost for debris disposal; a markup for overhead and profit; and construction contingency; the cost of bonds, insurance and business taxes; and the cost of Washington State sales tax).

CoL 6, 8. Based on its conclusion that Jim and Shannon Young's recovery should be so limited, the trial court entered judgment in favor of Jim and

Shannon Young and against Judith Young, after offsets,¹ in the amount of only \$126,687.00. Appendix B (Judgment).

Jim and Shannon Young timely appealed from the judgment. Judith Young has **not** cross-appealed.

III. CHALLENGES TO TRIAL COURT'S FINDINGS AND CONCLUSIONS; STANDARD OF REVIEW

Jim and Shannon Young do not challenge any of the trial court's findings of fact. They are amply supported by the evidence. Therefore, they should control on appeal. *Rogers Potato Service, LLC v. Countrywide Potato, LLC*, 152 Wn. 2d 387, 391, 97 P.3d 745 (2004).

Jim and Shannon Young challenge only the trial court's decision to ignore what the trial court itself stated was the "generally appropriate" measure of recovery (CoL 5), and to instead adopt a lesser measure. CoL 6-8. The Court of Appeals should review the trial court's conclusions of law as to the appropriate measure of damages *de novo*. *Robel v. Roundup Corp.*, 148 Wn. 2d 35, 43, 59 P.3d 611 (2002).

¹ The trial judge applied an offset of \$375,179.00 to the amount it awarded to account for work that Jim Young had done on Judith's property in Georgia, payments Judith had previously made to Jim and Shannon Young, the cancellation of an indebtedness, and for miscellaneous other matters. See CoL 9-21, especially CoL 19. Jim and Shannon Young do not contest the appropriateness of these offsets.

IV. ARGUMENT

A. Jim and Shannon Young are entitled to recover the greater of: (1) the cost Judith Young would have incurred to have a contractor perform the work which they performed, or (2) the amount by which their work enhanced the fair market value of the property.

In this unjust enrichment case, Jim and Shannon Young are entitled to recover the greater of: (1) the cost Judith Young would have incurred to have a contractor perform the work which they performed; or (2) the amount by which their work enhanced the fair market value of the property:

[T]he rule with respect to the measure of damages for claims of unjust enrichment has evolved. It is now recognized that:

If a sum of money is awarded to protect a party's restitution interest, it may, as justice requires, be measured by either: (a) the reasonable value to the other party of what he received in terms of what it would have cost him to obtain it from a person in the claimant's position, or (b) the extent to which the other party's property has been increased in value or his other interests advanced. The **greater** of the above two measures should be used in cases in which the work has increased the value of the defendant's property, but there is some discrepancy between the reasonable value of that work and the amount of the enhancement.

Realmark Developments, Inc. v. Ranson, 214 W. Va. 161, 166, 588 S.E.2d 150, 155 (2003) (emphasis in original), quoting 22 Am. Jur. Damages, § 56 (1988).

There may be cases where the enhancement to the defendant's property will be far less than the *quantum meruit* value of the plaintiff's efforts. . . . Conversely, there may be cases where the value of the enhancement greatly exceeds the cost of the improvement, as in this case.

Thus the rule has evolved that the proper measure of damages in unjust enrichment should be the **greater** of the two measures.

Robertus v. Candee, 205 Mont. 403, 408-09, 670 P.2d 540, 543 (1983) (emphasis in original), citing *Restatement of the Law, Contracts 2d* § 371 comment b (1981), 12 Williston, *Contracts* § 1480.

By definition, before there is a recovery in an unjust enrichment case, the defendant must be found to have received a benefit which the defendant, in equity and good conscience, should not retain. *Family Med. Bldg., Inc. v. Dept. of Social & Health Services*, 104 Wn. 2d 105, 112, 702 P.2d 459 (1985). Therefore, the measure of recovery in an unjust enrichment case focuses on the market value of the benefit conferred on the defendant. The law requires the defendant to either disgorge the market value of the services provided, or to pay the amount by which those services have actually increased the fair market value of the defendant's property. By focusing on an objective, market cost valuation, the law ensures that the defendant fully

disgorges that which it would be unjust for the defendant to retain. See generally 26 Williston, *Contracts* § 68.35, 68:36 (4th ed. 2003).

The Washington Supreme Court has adopted this reasoning. It has specifically held that a claimant in an unjust enrichment case who has in good faith provided services to the defendant for the improvement of real property is entitled to recover **the market value** of those services. *Noel v. Cole*, 98 Wn.2d 375, 655 P.2d 245 (1982).

In *Noel*, the Department of Natural Resources contracted with a contractor to cut timber on state property. 98 Wn. 2d at 377. The Department of Natural Resources failed to comply with the state Environmental Protection Act, so the contract was invalid. *Id.* at 380-81. However, the contractor was entitled to recover under a theory of unjust enrichment. *Id.* at 382.

Because the contractor had not been at fault in entering into the contract, the Washington Supreme Court held that the contractor was entitled to recover the market value of its services, i.e., what it would have cost the state to hire a third party to perform the work the contractor had actually performed:

Where, as here, the party seeking recovery is not at fault, reasonable value is measured by the amount which the benefit

conferred would have cost the defendant had it obtained the benefit from some other person in the plaintiff's position. Restatement (2d) of Contracts § 371, comment b (1981); 12 F. Williston, *Contracts* § 1483 (3d ed. 1970).

Id. at 383.

The Washington State Supreme Court in *Noel* thus specifically held that in an unjust enrichment case, the measure of recovery is the cost to the defendant of obtaining the services on the market. The Court specifically distinguished the market value recovery from recovery limited to the costs the claimant incurred in performing the services. *Id.* The Court held that a claimant's recovery should be limited to the actual costs the plaintiff incurred only if the plaintiff was at fault for causing the situation leading to the unjust enrichment recovery. *Noel*, 98 Wn. 2d at 383, n.6, citing *Edwards v. Renton*, 67 Wn. 2d 598, 607, 409 P.2d 153 (1965) (developer which persuaded city to enter into reimbursement contract in violation of competitive bidding statutes limited to recovering cost city would have incurred had it complied with such statutes). See also *Ducolon Mechanical, Inc. v. Shinstine/Forness, Inc.*, 77 Wn. App. 707, 712-13, 893 P.2d 1127 (1995) (non-defaulting contractor entitled to recover full value of its services, while defaulting contractor limited to contract price).

Here, the trial court found that Jim and Shannon Young worked on the ranch property at Judith Young's request. FoF 44-46, 52-53, 75, 91-92, 109, 168-171. Jim and Shannon Young at all times acted in good faith, and with the expectation of being compensated for their work. FoF 53, 63, 75, 118. Therefore, Jim and Shannon Young were entitled to recover the amount it would have cost Judith Young to hire a contractor to perform the same work or the amount that Jim and Shannon Young's work increased the fair market value of Judith Young's property, whichever was greater. *Noel, supra.*

Employing the correct market value standard, the trial court should have valued Jim and Shannon Young's work as being worth at least \$760,382.00. Michael Summers offered wholly uncontradicted testimony that it would have cost Judith \$760,382.00, in year 2000 dollars, to hire a contractor to perform the work that Jim and Shannon Young actually performed. Appendix C (Tr. Ex. 87). The trial court explicitly found, as a fact, that Mr. Summers' testimony, opinion, and cost estimate were accurate and credible. FoF 157. The trial court explicitly incorporated Mr. Summers' cost estimate by reference into its findings of fact. FoF 77.

Jan Henry independently corroborated the opinion offered by Mr. Summers. Jan Henry testified that: (1) in 1998, the ranch property was worth the \$1,050,000.00 that Judith Young paid for it; (2) the property was worth \$2.2 to \$2.5 million today; and (3) only about \$300,000.00 to \$400,000.00 of that increase was attributable to the inherent increase in the value of real property over time. FoF 160-62. In other words, according Ms. Henry, Jim and Shannon Young's work had contributed approximately \$750,000.00 to \$1,150,000.00 to the current fair market value of the property. The trial court specifically found Ms. Henry's testimony to be accurate and credible, and rejected the competing testimony offered by Judith Young's expert. FoF 163, 167.

Therefore, if the trial court had applied what it recognized to be the generally appropriate measure of damages, the trial court should have valued Jim and Shannon Young work as being worth at least \$760,382.00.

B. Because the trial court employed a legally incorrect measure of damages, the trial court undervalued Jim and Shannon Young's work.

The trial court did not value Jim and Shannon Young's work by looking to what it would have cost Judith Young to obtain that work on the market. Because the trial court employed a legally incorrect measure of damages, the trial court undervalued Jim and Shannon Young's work.

Jim and Shannon Young provided the trial court with the cases setting forth the correct measure of recovery. CP 171-176. Judith Young did not provide the trial court with any authority that arguably justified an alternate measure of recovery. The trial court itself cited to no such authority. In fact, no such authority exists.

Moreover, nothing in the trial court's factual findings even remotely justifies or explains its decision. To the contrary, the trial court's findings only serve to highlight the fact that Jim and Shannon Young were themselves general contractors who incurred the same expenses that any other contractor would have incurred and provided a work product at least as good as, if not better, than any other contractor would have provided.

Thus, the trial court found that Jim Young was in fact a licensed and bonded general contractor. FoF 5. The trial court also found that, like a general contractor, Jim and Shannon Young either owned or obtained the heavy equipment, machinery, and tools that were used to improve the ranch property. FoF 80. The trial court also found that, like a general contractor, Jim and Shannon Young had either performed or supervised the performance of all the work on the property. FoF 79. And, the trial court explicitly found that the quality of the work performed by Jim and Shannon Young was "of

good and workmanlike quality or better, and was of at least the quality or better than what Judith Young would have obtained had Judith Young hired a contractor to perform similar work.” FoF 78.

These findings all suggest that the trial court should have valued Jim and Shannon Young work by looking to what it would have cost Judith Young to obtain the same services on the market. There is simply nothing in any of the findings to justify the trial court’s decision to ignore the generally applicable measure of damages and to apply a less favorable standard to value the work that Jim and Shannon Young had performed.

Judith Young may point to comments that the trial court made in its oral ruling as constituting an explanation for its decision to apply something other than the “generally applicable” measure of damages under the particular circumstances of this case. This Court should decline any invitation to use the trial court’s oral ruling for this purpose, as it should “not look beyond the trial court’s written Findings and Conclusions unless they are inadequate.” *In re detention of Smith*, 117 Wn. App. 611, 615, 72 P.3d 186 (2003), citing *In re LaBelle*, 107 Wn. 2d 196, 219, 728 P.2d 138 (1986). Here, the trial court entered extremely detailed findings of fact and conclusions of law; they are plainly not inadequate.

Moreover, even if this Court considers the trial court's oral ruling, that ruling does not provide legally or factually sufficient justification for its refusal to apply the proper measure of damages. In its oral opinion, the trial court stated:

I heard the testimony of the defense expert as to his evaluation of the cost of the work done. I'll tell you that, for the most part, I accepted that expert's opinion about the cost of the work done. However, when we get to the last Page 9 of exhibit number 87, I did not agree with a number of things that the expert should be considered by the Court.

First of all, the subtotal of the work, the actual work done and its value, according to that expert, was \$501,866. He then went on to say that there would be things like mobilization and demobilization, supervision, tools and general equipment, debris disposal, overhead, and a profit. If a contractor had been in charge of various subcontractors, a contingency fee of 5% called the construction contingency fee, Washington State sales tax, bonds, insurance, business taxes and so forth. **None of that money was expended.**

This situation is somewhat unusual in that Mr. James Young was a licensed and bonded contractor in certain regards was [sic] not for construction but rather for his business of doing land-clearing and also excavation, as I understand it. I don't feel it appropriate to award any of those costs that a general contractor would have perhaps incurred based upon the facts before me.

Transcript of Trial Court's May 30, 2005 oral decision, p. 9-10 (emphasis added).

The trial court's oral opinion shows that it intended to limit Jim and Shannon Young's recovery to only its approximation of the costs which Jim and Shannon Young actually expended. This constituted clear legal error. Because Judith Young had asked Jim and Shannon Young to work on her property, and because Jim and Shannon Young had performed that work in good faith, Jim and Shannon Young were entitled to recover at least the fair market value of the services they provided. *Noel v. Cole*, 98 Wn. 2d 375, 383, 655 P.2d 245 (1982).

By adopting the wrong measure of recovery, the trial court caused Judith Young to be unjustly enriched. Judith Young had asked Jim and Shannon Young to perform work improving the ranch property, in order to fix it up for her. FoF 44. Having asked Jim and Shannon Young to do the work, Judith Young became obligated to pay Jim and Shannon Young therefore. *Kilthau v. Covelli*, 17 Wn. App. 460, 462, 563 P.2d 1305 (1977) (request for work followed by performance of work creates obligation to pay for work). Pursuant to Michael Summers' uncontested testimony, it would have cost Judith Young \$760,382.00 in year 2000 dollars to have hired another contractor to perform the same work.

In equity and good conscience, Judith Young had no right to retain any of the increase in the value of the ranch property attributable to the work performed by Jim and Shannon Young. *Family Med. Bldg., Inc. v. State Dept. of Social Health Services*, 104 Wn. 2d 105, 112, 702 P.2d 459 (1985). Pursuant to Jan Henry's testimony, Jim and Shannon Young's work on the property increased its fair market value by between \$750,000.00 and \$1,150,000.00. The trial court's arbitrary decision to limit Jim and Shannon Young's recovery to their supposed "costs" resulted in Judith Young receiving a wholly unjustified windfall of at least \$250,000.00.

Moreover, even if the trial court had been legally entitled (and it was not) to limit Jim and Shannon Young's recovery to their "costs," the trial court plainly erred in denying Jim and Shannon Young an award for many of the items listed on page 9 of Mr. Summers' cost estimate.

For example, the trial court denied Jim and Shannon Young any recovery for the cost incurred to supervise the work. CoL 6(b). But the trial court found, as a fact, that Jim and Shannon Young in fact supervised all the work that they did not do themselves. FoF 79. Similarly, the trial court denied Jim and Shannon Young any recovery for the cost of providing the tools and equipment used to carry out the work. CoL 8(b). But the trial court found, as a fact, that Jim and Shannon Young provided all the tools and

general equipment used in the work. FoF 80. And the trial court wrongfully declined to include any award for profit. See *Heaton v. Imus*, 93 Wn. 2d 249, 254, 608 P.2d 631 (1980) (claimant in unjust enrichment case is entitled to recover reasonable profit, in the absence of specific circumstances calling for exclusion of profit).

In sum, the trial court plainly erred, both legally and factually, in its decision to limit Jim and Shannon Young's recovery by an approximation of their "costs," rather than by basing its award on the full amount it would have cost Judith Young to have a third-party contractor do the work. Based on what the trial court itself found to be the generally applicable measure of recovery and on the trial court's explicit acceptance of the testimony of Jim and Shannon Young's expert witnesses, the Court should have valued Jim and Shannon Young's work as being worth a minimum of \$760,382.00, minimum. After applying \$375,179.00 in offsets, the appropriateness of which is not disputed, the trial court should have entered judgment in favor of Jim and Shannon Young for at least \$385,203.00.

IV. CONCLUSION

The Court should hold that:

- The measure of recovery in an unjust enrichment case in which the claimant, without fault, performs work which improves real property is the greater of the fair market value

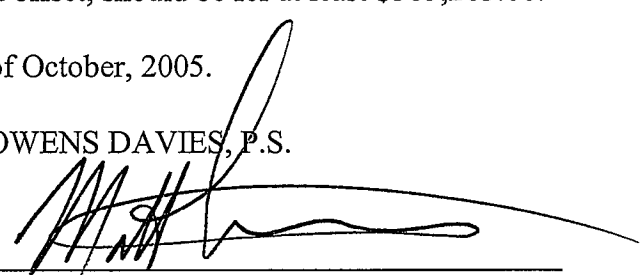
of the services provided by the claimant, or the amount by which the claimant's work has increased the fair market value of the property;

- Based on the facts as found by the trial court, the fair market value of Jim and Shannon Young's work was \$760,382.00, because it would have cost Judith Young at least that much to hire a general contractor to perform the same work;
- The work that Jim and Shannon Young performed on the property increased its fair market value by between \$750,000.00-\$1,150,000.00;
- That the trial court should have valued the work performed by Jim and Shannon Young as being worth at least \$760,382.00.

The Court should remand this matter to the trial court with instructions that the trial court conduct an evidentiary hearing for the limited purpose of applying the correct measure of damages to determine the value of the work for which Jim and Shannon Young are entitled to recover in this case. This Court should further direct the trial court that the minimum valuation of the work must be at least \$760,382.00, such that its final judgment, after the uncontested offset, should be for at least \$385,203.00.

DATED this 24th day of October, 2005.

OWENS DAVIES, P.S.



Matthew B. Edwards, WSBA No. 18332
Attorneys for James and Shannon Young

APPENDICES

APPENDIX A	Findings of Fact and Conclusions of Law
APPENDIX B.	Trial Court Judgment
APPENDIX C	Michael Summers' Cost Estimate, Defendants' Trial Exhibit 87

APPENDIX A

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

05 APR 15 AM 11:06

BETTY J. GOULD, CLERK

BY 62
DEPUTY

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

JUDITH YOUNG,


Plaintiff,

vs.

JAMES M. YOUNG and SHANNON YOUNG,
husband and wife; and STATE OF
WASHINGTON, DEPARTMENT OF LABOR &
INDUSTRIES,

Defendants.

NO. 03-2-00937-4

~~PROPOSED~~ ME 
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came on regularly for trial on Monday, March 14 through Friday, March 18, 2005. The Court took a view of the premises and heard opening statements on Monday, March 14. The Court heard the testimony of witnesses on Tuesday, March 15, Wednesday, March 16, and Thursday March 17. The Court heard closing arguments on Friday, March 18.

The Court considered the testimony of the following witnesses:

1. Judith Young
2. James Young
3. Shannon Young
4. Michael Summers

FINDINGS OF FACT AND CONCLUSIONS OF LAW-1
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ORIGINAL

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Facsimile: (360) 943-6150

- 1 5. Jan Henry
- 2 6. Murphy Wagar
- 3 7. William Knight, and
- 4
- 5 8. Gene Weaver

6 In addition, the Court admitted numerous exhibits into evidence as shown on the list which
7 is attached hereto as Exhibit A and incorporated by reference herein.

8 The Court issued its oral decision on Wednesday, March 30, 2005 at 11:00 a.m. A copy
9 of the transcript of the Court's oral decision is attached hereto as Exhibit B and incorporated by
10 reference herein.

11 After the Court rendered its oral decision, but prior to entry of these findings of fact,
12 conclusions of law, and judgment, the Court heard:

- 14 ▶ Jim and Shannon Young's Motion for Reconsideration re Double Credit for
15 ServPro Invoice;
- 16 ▶ Jim and Shannon Young's Motion for an Award of Attorney's Fees Related to Late
17 Disclosed Opinions of Gene Weaver;
- 18 " "
- 19 ▶ Judith Young's Motion for Clarification Regarding Offset of Delinquent Interest
20 Payments;

21 A copy of the Court's ruling on those motions is incorporated by reference herein.

22 Based on the foregoing, the Court hereby enters Findings of Fact and Conclusions of Law
23 as follows:

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25
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27
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FINDINGS OF FACT AND CONCLUSIONS OF LAW-2
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FINDINGS OF FACT

PARTIES

1. The plaintiff, Judith Young, is a single individual.
2. Judith Young resides in a mobile home on an approximately 200 acre piece of property located in rural Georgia.
3. Judith Young is independently wealthy.
4. The defendants, James M. ("Jim") and Shannon Young, are a married couple.
5. Jim Young is a licensed and bonded contractor engaged in the businesses of timber cutting, clearing, grading, dozing, and concrete slab construction.
6. Shannon Young is not currently employed outside of the home.
7. Jim and Shannon Young have four children.

**RELATIONSHIP PRIOR TO PURCHASE
OF THURSTON COUNTY PROPERTY**

8. Judith Young is Jim Young's aunt.
9. Although they had previously been acquainted, Judith Young and Jim and Shannon Young began developing a close relationship in 1993 when they all traveled to Minneapolis, Minnesota at the time of Judith Young's mother's last illness and death.
10. Between 1993 and 1997, Judith Young and James and Shannon Young kept in regular contact over the telephone.
11. Throughout this time, and until they moved onto the Thurston County property, Jim and Shannon Young lived in a house which they owned in Shelton, Washington.

12. In 1997, Jim and Shannon Young purchased an unimproved piece of property located in the Nisqually area of Thurston County with the intent of constructing a log home upon the property and moving there.

NOVEMBER 1996 LOAN

13. In November 1996, Judith Young lent Jim and Shannon Young \$150,000.00. Jim and Shannon Young agreed to make interest only payments in the amount of \$850.00 per month until November 2006, at which time the principle balance became become due and payable.

14. Jim and Shannon Young made the monthly interest payments through May, 2002, but have not made any interest payments on the debt since that date.

GEORGIA OTTER FACILITY

15. For many years prior to 1998, Judith Young has managed an otter conservation facility located upon her property in Georgia.

16. Since 1993, Judith has left the otter conservation center overnight on only four occasions: on her mother's death, on her father's death, to attend her deposition in this case, and to attend the trial of this case.

17. In 1997, the otter conservation facility consists of approximately five temporary 12' x 24' enclosed steel and wire cages set in concrete, covered by tin roofs, and one larger, more permanent, in-ground pen that was approximately four times the size of the temporary pens. The otter conservation facility also had a food preparation area and related facilities.

18. Many of the buildings and facilities on Judith's property, including buildings, pens and other facilities used in connection with her otter conservation center, were in substantial need of maintenance and repair.

FINDINGS OF FACT AND CONCLUSIONS OF LAW-4
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1 19. In 1997, and at all times since, Judith Young has kept numerous animals on her
2 property in Georgia in addition to her otters, including horses, llamas, dogs, cats, and birds.

3 1997 VISIT BY JIM AND SHANNON YOUNG

4 20. In 1997, Jim and Shannon Young, for the first time, visited Judith at her property
5 in Georgia, and stayed with Judith Young for approximately one week.

6 21. Prior to and during Jim and Shannon Young's 1997 visit to Judith Young's property
7 in Georgia, Judith Young had told Jim and Shannon Young she did not like her neighbors, did not
8 like living in Georgia, and that she wanted to move herself, her otter conservation center, and her
9 animals elsewhere.

10 22. During their visit to Judith Young in Georgia in 1997, Jim and Shannon Young
11 installed a concrete slab underneath Judith Young's garage near her mobile home. Jim and
12 Shannon Young also did other work repairing and maintaining Judith Young's property.

13 23. Jim and Shannon Young did this work without any intent that they be paid for it.

14 24. Judith Young discussed with Jim and Shannon Young the possibility of moving to
15 Washington state.

16 25. Judith Young had told Jim Young she wanted to find a property to move to with
17 natural springs, because well water gave her otters gall stones.

18 PURCHASE OF THURSTON COUNTY PROPERTY

19 26. In the spring of 1998, Jim Young was asked to buy certain property located in
20 Thurston County, Washington (the "Thurston County property").

21 27. The Thurston County property had not been lived on and properly maintained for
22 about ten years.

23 28. The Thurston County property had a house ("the Ranch House") located on it.

1 29. Although it was structurally sound, the Ranch House was in poor condition. The
2 roof had leaked, which had caused water damage to much of the interior dry-wall, carpeting, and
3 flooring. Most of the appliances and toilets did not work.

4 30. In addition to the Ranch House, there were a number of outbuildings and facilities
5 located on the Thurston County property. These outbuildings and facilities included a garage, a
6 shop building, a three story barn, two manure lagoons, an old, derelict farm house, a granary, and
7 several smaller outbuildings, some of which were derelict.

8 31. All of these buildings had not been maintained during the period the property had
9 been left vacant, such that all the buildings were in substantial need of maintenance and repair.

10 32. Because the property had not been occupied or cared for for several years, the land
11 itself was in a run-down condition.

12 33. The fields on the property were full of rocks and stumps. There was some fencing
13 on the property, but it was incomplete and in poor repair. The roads on the property had not been
14 maintained. Numerous cars had been abandoned on the property. There was a substantial amount
15 of debris left in the outbuildings and scattered throughout the property. Tansy (a noxious weed
16 subject to control by the Thurston County Noxious Weed Control Authority) was growing on the
17 property.

18 34. At the time Jim Young was asked to hay the Thurston County property, its owner
19 had listed the property for sale.

20 35. The owner of the property had employed Jan Henry, a licensed real estate agent
21 who had been involved in the purchase and sale of real estate in Thurston County for many years,
22 to assist in the marketing and sale of the property.

1 36. Jim Young did not actually hay the Thurston County property because the fields
2 were too full of rocks to permit him to use his haying equipment.

3 37. However, Jim and Shannon Young brought the Thurston County property to the
4 attention of Judith Young.
5

6 38. Despite the poor condition of the property, Jim and Shannon Young believed that
7 the property had characteristics that might make it desirable for Judith Young.

8 39. The property was about as large as Judith Young's property in Georgia, and thus
9 would afford her the privacy that she desired.

10 40. There were also natural springs located upon the property, which Judith Young
11 desired to use to supply water for her otters.
12

13 41. Jim and Shannon Young fully described the Thurston County property to Judith
14 Young, including both its current run-down condition and its potential for development.

15 42. Jim and Shannon Young also sent Judith Young numerous pictures of the property.

16 43. Judith Young discussed with Jim and Shannon Young plans for improving the
17 property for her use.
18

19 44. Judith Young asked Jim and Shannon Young to do, and Jim and Shannon Young
20 agreed that Jim and Shannon Young would do, the work necessary to fix up the property for Judith
21 Young.

22 45. Judith Young agreed that Jim and Shannon Young would do all the work necessary
23 to prepare the Thurston County property for Judith's, her otters', and her other animals' use, prior
24 to Judith Young moving out to the Thurston County property.
25
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1 46. Judith Young told Jim and Shannon Young that even after Judith Young had moved
2 onto the Thurston County property, that they should continue to live nearby, and that they should
3 continue to assist her in improving and maintaining the property, and operating her otter facility.
4

5 47. Judith Young decided to purchase the Thurston County property.
6

7 48. Pursuant to Judith Young's instructions, in June 1998 Jim Young submitted written
8 offers to purchase the Thurston County property.
9

10 49. The owner of the Thurston County property received several offers to purchase the
11 property at prices comparable to the prices offered by Judith Young. However, the owner elected
12 to accept Judith Young's offers to purchase the property because Judith Young's offers were not
13 contingent upon financing.

14 50. In June and July 1998, after Jim Young had submitted offers to purchase the
15 Thurston County property on behalf of Judith Young, but before for the sale of the Thurston
16 County property to Judith Young had closed, Jim Young traveled, at Judith Young's request, to
17 Judith Young's property in Georgia to perform further work for Judith Young upon her property
18 there.

19 51. Jim Young had an acquaintance, Murphy Wagar, travel with him to Georgia to
20 assist him in performing the work that Judith had requested him to do upon her property there.

21 52. During the course of this visit, Jim Young discussed with Judith Young the issue
22 of how he and Shannon Young would be paid for the work he and Shannon Young had been and
23 would continue to be doing for Judith Young, both to fix up the Thurston County property and for
24 the work that Judith Young had requested him to do to improve her property in Georgia.

25 53. As a result of his conversations with Judith Young, Jim Young reasonably and in
26 good faith formed the belief that Judith Young had agreed to pay him for the work that Judith
27

1 Young had asked Jim and Shannon Young to do both on the Thurston County property and her
2 property in Georgia by buying Jim and Shannon Young a property of their own near the Thurston
3 County property.

4
5 54. Judith Young purchased the Thurston County property without ever having herself
6 seen the property.

7 55. Because Judith Young did not want to leave her otters in Georgia, Judith Young
8 executed a power of attorney authorizing Shannon Young to sign the necessary documentation to
9 close the purchase and sale of the Thurston County property on her behalf.

10 56. The purchase of the Thurston County property closed in late July/early August,
11 1998.

12
13 57. Judith Young paid a total purchase price for the Thurston County property of
14 \$1,050,000.00.

15 58. The \$1,050,000.00 purchase price of the property reflected the fair market value
16 of the property at the time of its acquisition by Judith Young.

17 59. The legal description of the Thurston County property is:

18 Parcel A:

19
20 The west half of the Northeast quarter, and that part of the east quarter of the
21 Northwest quarter of Section 14, Township 16 North, Range 2 West, W.M., lying
22 Northerly of Creek; excepting therefrom county road known as 143rd Avenue
(formerly McDuff Road) along the North boundary.

23 Parcel B:

24 Parcel 1 of Large Lot Subdivision No. LL-0525, as recorded June 23, 1989 in
25 Volume 3 of Large Lot Subdivision, pages 451 through 453 inclusive, under
26 Recording No. 8906230062, Records of Thurston County Auditor.

1 Parcel C:

2 Parcel 2 of Large Lot Subdivision No. LL-0525, as recorded June 23, 1989 in
3 Volume 3 of Large Lot Subdivisions, pages 451 through 453 inclusive, under
4 Recording No. 8906230062, Records of Thurston County Auditor.

5 60. The property is approximately 186 acres in size.

6 61. At the time of the closing of the sale of the Thurston County property, Judith
7 Young and Jim Young's names were put onto the title to the property.

8 62. Jim Young's name was put on the title with the knowledge and consent of Judith
9 Young.

10 63. Jim Young's name was put on the title in the good faith belief that this would
11 facilitate the acquisition of the permits and approvals be necessary to construct the otter pens and
12 related improvements upon the property, and to obtain the permits necessary to move Judith's
13 otters to Washington state.
14 otters to Washington state.

15 64. At the time of the purchase of the Thurston County property, Judith Young had no
16 plans to use it, rent it, or have anyone live upon it before she moved herself, her otters, and her
17 other animals onto it.

18 **JIM YOUNG'S WORK ON GEORGIA PROPERTY**

19
20 65. Between June/July 1998 and March 2002, Judith Young periodically requested that
21 Jim Young travel to her property in Georgia in order to have him perform further work on her
22 property there.

23 66. Between June/July 1998 and March 2002, Jim Young traveled to Judith Young's
24 Georgia property, at her request, on at least 12 separate occasions in order to perform work for
25 Judith Young on her property in Georgia.

26
27 67. Each of these visits lasted at least a week. Some lasted substantially longer.

1 68. During these visits Jim Young built five new otter pens, repaired and layed concrete
2 for six additional pens, installed a concrete pad in front of the otter pens, installed a septic system
3 for the otter conservation center office, helped set up the office and replaced the floor of the office,
4 performed road repair work, installed the foundation of a dog barn, assisted with the installation
5 of a new well, cleared approximately 40 acres of land, and performed miscellaneous general labor
6 including the mowing of fields, repairing of fencing, and the performance of plumbing and
7 electrical work upon Judith Young's house.

9 IMPROVEMENTS TO THURSTON COUNTY PROPERTY

10 69. Shortly before the closing of the purchase, the Thurston County property was
11 vandalized.

12
13 70. Prior to the episode of vandalism, Judith Young and Jim and Shannon Young had
14 not discussed the possibility of anyone living on the property prior to Judith Young moving
15 herself, her otters and her other animals onto it.

16 71. However, after the vandalism, Judith Young agreed that Jim and Shannon Young
17 and their family should move onto the property, in order to prevent additional acts of vandalism.

18 72. Judith Young also understood that Jim and Shannon Young's move onto the
19 property would facilitate Jim and Shannon Young's efforts to clean up, improve, and get the
20 property ready for Judith Young's planned move with her otters and other animals onto the
21 property.
22

23 73. Judith Young never asked Jim and Shannon Young to pay rent, either at the time
24 they first moved onto the property, or at any time thereafter.

25 74. Jim and Shannon Young began cleaning up the Thurston County property,
26 improving it, and getting it ready for Judith Young's move onto the property.
27

1 75. As part of this effort, Jim and Shannon Young, acting in the good faith, reasonable
2 belief that this was within the scope of the work which Judith Young had asked them to do,
3 performed all of the work to improve the property that is described in defendants' Exhibit 87.
4

5 76. The Court specifically find that defendants' exhibit 87 accurately describes the
6 work performed by Jim and Shannon Young on the property between the time when Judith Young
7 originally purchased the Thurston County property and the time of trial.

8 77. The description and enumeration of the work contained in Defendants' Exhibit 87
9 is incorporated by reference herein.

10 78. All of the work which Jim and Shannon Young performed on the Thurston County
11 property was of good and workmanlike quality or better, and was of at least the quality or better
12 than what Judith Young would have be obtained had Judith Young hired a contractor to perform
13 similar work.
14

15 79. Jim and Shannon Young either performed all the work on the Thurston County
16 property themselves, or, to the extent they paid for or bartered with others to provide materials,
17 services, or labor, supervised the work.
18

19 80. Jim and Shannon Young either owned or obtained the heavy equipment, machinery,
20 and tools that were used to improve the Thurston County property.

21 81. Jim and Shannon Young's efforts initially, focused on improving the Thurston
22 County property, cleaning up the grounds, clearing the area where the otter pens were to be
23 installed, and improving the outbuildings.

24 82. Between 1998, when the sale of the property closed and the end of 2000, Jim and
25 Shannon Young paid all of the expenses associated with the improvement and upkeep of the
26 Thurston County property.
27

83. By approximately the end of calendar year 2000, Jim and Shannon Young had done substantially all the work to the outbuildings and grounds described in Defendants' Exhibit 87. The only work described in Defendant's Exhibit 87 which Jim and Shannon Young had not substantially finished was the remodeling and upgrading of the Ranch House.

84. Shortly after Jim and Shannon Young occupied the Ranch House, they made a limited number of repairs to it. They replaced the roof. They addressed the mold that had grown up where the drywall and floors had become wet. They removed the rugs, leaving plywood floors exposed. They repaired the old, existing toilets and appliances.

85. After Jim and Shannon Young had made these limited repairs to the Ranch House, Jim and Shannon Young did not make further substantial repairs to the Ranch House until November 2001, as described below.

86. The Thurston County property had no fair market rental value in light of the condition it was in at the time it was first occupied by James and Shannon Young.

CONTACT BETWEEN PARTIES

87. After the purchase of the Thurston County property had closed, Judith Young and Jim and Shannon Young kept in constant contact.

88. Originally, this contact occurred primarily by telephone.

89. Later, in approximately mid-2000, after Jim and Shannon acquired a computer with an Internet connection, this contact also occurred via e-mail. Even then, the parties continued to constantly call one another.

90. Jim Young and Judith Young would also discuss the work Jim and Shannon Young were doing during Jim Young's frequent trips to Georgia to work on her property.

FINDINGS OF FACT AND CONCLUSIONS OF LAW-13
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1 91. Judith Young was at all times informed and aware of the work that Jim and
2 Shannon Young were performing on the Thurston County property.

3 92. At no time prior to the filing of this complaint did Judith ever advise Jim and
4 Shannon Young that she objected to the work that they were performing on her property, display
5 dissatisfaction with the work, instruct them to stop performing the work, or the like.
6

7 MAINTENANCE

8 93. From the time when Jim and Shannon Young first moved onto the property until
9 the time of trial, Jim and Shannon Young have consistently and actively worked to maintain the
10 house, the outbuildings, and the property in good condition.

11 94. Jim and Shannon Young performed a substantial amount of work maintaining the
12 property.
13

14 95. The work Jim and Shannon Young performed in order to maintain the property is
15 not incorporated into the list of improvements for which Jim and Shannon Young are seeking to
16 recover under a theory of unjust enrichment, as described in Defendants' Trial Exhibit 87.

17 96. To the extent that the Thurston County property may have had a rental value, the
18 work that Jim and Shannon Young put in in order to maintain the property equaled or exceeded
19 the fair market rental value of the property.
20

21 REIMBURSEMENTS

22 97. Between the closing of the sale and the end of 2000, Jim and Shannon Young
23 periodically requested that Judith Young reimburse them for the property taxes and the insurance
24 that they had paid for the Thurston County property, and Judith Young did reimburse them for the
25 property taxes and insurance.
26

1 98. In April 2000, Jim Young seriously injured himself with a chain saw. This
2 interfered with his ability to earn income in that year.

3 99. In December 2000 and January 2001, Judith Young asked Jim Young to travel to
4 Los Angeles, first to check on the health of her father, and then to attend his funeral together with
5 her.
6

7 100. Judith Young then asked Jim Young to travel to Georgia to perform further work
8 on her property there for her.

9 101. Because of the impact on their finances caused by Jim Young's injury in April
10 2000, and because Judith Young had asked Jim Young to travel away from Thurston County, on
11 her behalf, for an unusually long period of time, Shannon Young for the first time asked Judith
12 Young for reimbursement for some of the out-of-pocket expenses which Jim and Shannon Young
13 had incurred in improving the Thurston County property.
14

15 102. Judith Young agreed to reimburse Jim and Shannon Young for some of the out-of-
16 pocket expenses which Jim and Shannon Young had incurred.

17 103. On January 18, 2001, Judith Young wired Jim and Shannon Young the sum of
18 \$52,984.41.
19

20 104. Of this amount \$35,250.00 was reimbursement for out-of-pocket expenses that Jim
21 and Shannon Young had incurred in performing work upon and improving the Thurston County
22 property.

23 105. The balance of the funds wired by Judith Young to Jim and Shannon Young in
24 January 2001 was for reimbursement for property taxes, insurance, and for the cost of a survey
25 Judith Young had directed Jim Young to have performed on her property.
26
27
28

1 106. In February 2001, after Judith Young made this payment, Jim Young traveled to
2 Georgia to Judith Young's property and performed further work for her there.

3 107. In March 2001, Judith Young reimbursed Jim and Shannon Young \$6,009.90 for
4 work that had been performed to a well located upon the Thurston County property.
5

6 CATTLE RANCH AGREEMENT

7 108. Sometime in 2000, Judith Young made the decision that she was not going to move
8 out to the Thurston County property after all.

9 109. However, Judith Young did not immediately communicate her decision to Jim and
10 Shannon Young. Judith Young continued to permit Jim and Shannon Young to continue to work
11 to improve the Thurston County property, and never suggested or directed Jim and Shannon
12 Young to stop performing work on the repairing and improving the property.
13

14 110. By April 2001, Jim and Shannon Young had begun to suspect that Judith Young
15 had decided not to move out to the Thurston County property after all.

16 111. Jim and Shannon Young raised with Judith Young the possibility of developing the
17 Thurston County property into a working cattle ranch.
18

19 112. After discussing this proposal for a period of approximately two months, both
20 Judith Young and Jim and Shannon Young each in good faith formed the belief that they had
21 reached an agreement.

22 113. Jim and Shannon Young reasonably and in good faith believed and understood that
23 their agreement with Judith Young to develop the property into a working cattle ranch included
24 the following:
25

- 26 • Judith Young was to contribute \$150,000.00 in cash, and a one half interest in the
27 property;
28

- 1 • Jim and Shannon Young were to forego any claim for payment for the work that
- 2 they had performed for Judith on her property in Georgia or on her property in
- 3 Thurston County;
- 4 • Jim and Shannon were to contribute at least \$150,000.00 worth of cattle and
- 5 equipment;
- 6 • Jim and Shannon Young, as part owners of the Thurston County property, would
- 7 assume full responsibility for paying the real property taxes and insurance on the
- 8 property;
- 9 • Jim and Shannon were to contribute all of their time and labor, over a 5 to 7 year
- 10 period, necessary to develop the property into a working cattle ranch;
- 11 • At the end of that period the property, cattle, and equipment would be sold and the
- 12 proceeds of the sales split equally between Jim and Shannon, and Judith Young.

13 114. Judith Young's understanding of the terms of their agreement substantially differed
14 from Jim and Shannon Young's understanding. In particular, Judith Young believed that she had
15 not agreed to contribute one-half interest in the property.

16 115. The "agreement" was never reduced to a writing.

17 116. On or about June 11, 2001, acting in the belief that she had reached full agreement
18 with Jim and Shannon Young, Judith Young had \$150,000.00 wired from her account to Jim and
19 Shannon Young.

20 117. Acting in the good faith belief that they had reached an agreement with Judith
21 Young, Jim and Shannon Young accepted the \$150,000.00 payment from Judith Young.

22 118. Acting in the good faith belief that they had reached an agreement with Judith
23 Young, Jim and Shannon Young began developing the property as a cattle ranch.

24 119. Acting in the good faith belief that they had reached an agreement with Judith
25 Young, beginning in June of 2001, and continuing up until the time the complaint in this action
26 was filed, Jim and Shannon Young paid the property taxes on the Thurston County property.

119(a) At all times pertaining to the matters referenced in these Findings, Judith Young acted in good faith as well.

CS
ME

120. The total amount of property taxes which Jim and Shannon Young paid for the Thurston County property during this time period was \$10,677.00.

121. Beginning in June of 2001, and continuing up to the time of trial, Jim and Shannon Young paid to have the Thurston County property insured.

FLOOD AND RANCH HOUSE REMODEL

122. In October 2001, a pipe burst in the interior of the Ranch House.

123. Jim and Shannon made a claim upon their insurance on account of the resulting flood.

124. Their insurer directed ServPro, a contractor specializing in flood restoration and repair, to prepare an estimate for the work necessary to dry out and repair some of the flood damage.

125. ServPro prepared an estimate for its work totaling \$19,914.92.

126. The insurer subsequently issued a check made payable jointly to Jim and Shannon Young and ServPro.

127. Shannon Young cashed the insurer's check, which she deposited in Jim and Shannon Young's bank account.

128. Shannon Young then immediately wrote a check to ServPro for the work that it had performed.

129. The work performed by ServPro in response to the flood, for which the insurer paid Jim and Shannon Young, and for which Jim and Shannon Young paid ServPro, constituted work that was not included in work described by Michael Summers in Defendants' Exhibit 87.

130. Prompted by the October 2001 flooding incident, Jim and Shannon Young began to substantially remodel and improve the interior of the Ranch House.

1 131. The work Jim and Shannon Young performed included all the work described as
2 line items 2-17 of Defendants' Exhibit 87.

3 132. Jim and Shannon Young had substantially completed all this work by March 2002.
4

5 SECOND REIMBURSEMENT

6 133. In February, 2002 Judith Young again asked Jim Young to travel to Georgia to
7 perform work for her on her property there.

8 134. On this particular occasion, Judith Young wanted Jim Young to promptly install
9 a large, permanent, in-ground otter pen that would require Jim Young to remain in Georgia for an
10 extended period of time.

11 135. In light of the fact that Judith Young had against asked Jim Young to spend an
12 extended period of time away from Thurston County, Shannon Young again asked Judith Young
13 to reimburse Jim and Shannon Young for some of the out-of-pocket expenses that they had
14 incurred remodeling the ranch house.
15

16 136. In order to induce Jim Young to travel to Georgia to meet her schedule, Judith
17 agreed to reimburse Jim and Shannon Young for these expenses.
18

19 137. Shannon Young created a list of out-of-pocket expenses that Jim and Shannon
20 Young had paid in connection with the remodel of the Ranch House.

21 138. Shannon Young inadvertently included the ServPro invoice in the list of out-of-
22 pocket expenses which she created and submitted for reimbursement.

23 139. In February 2002, in response to Shannon Young's list, Judith Young had
24 \$87,597.00 wired to Jim and Shannon Young.
25

26 140. In March of 2002, Jim Young traveled to Georgia and installed the large, in-ground
27 otter pen for Judith Young on her property in Georgia.
28

JUDITH YOUNG LETTER AND RESPONSE

141. In August, 2002, Judith Young hired an attorney in Seattle in order to prepare the documentation necessary to take Jim Young's name off of the title to the Thurston County property.

142. This attorney sent a letter enclosing the documentation to Jim Young in September, 2002.

143. In response, Jim and Shannon Young had their attorney send Judith Young's attorney a letter describing the cattle ranch agreement as they understood it.

144. Shortly thereafter, Judith Young stopped communicating with Jim and Shannon Young.

SALE OF HORSE

145. In the fall of 2002, after Judith Young had stopped communicating with Jim and Shannon Young, Jim and Shannon Young sold Judith Young's horse, Tuffy.

146. The sale price was \$2,000.00.

THE LAWSUIT

147. In May, 2003, Judith Young filed her complaint in this action.

148. In that complaint, Judith Young asked the Court to quiet title to the property in her name, sought to eject Jim and Shannon Young from the Thurston County property, asked the Court to find Jim and Shannon liable for converting her property, and asked for an award of damages.

149. In June 2003, Jim and Shannon Young filed an answer and counterclaim.

150. In their counterclaim, Jim and Shannon Young asserted a claim under the theory of unjust enrichment for the improvements that they had made to Judith Young's property.

1 151. In September, 2004, the Court heard the parties' cross-motions for summary
2 judgment. The Court granted the Defendants' Motion to Dismiss Judith Young's claim for
3 conversion and damages. Otherwise the Court denied the cross-motions.

4 152. Although it had not been addressed by the pleadings in this matter, at the time of
5 trial both parties sought to introduce evidence pertaining to Judith Young's November 1996 loan
6 of \$150,000.00 to Jim and Shannon Young, and of the payments Jim and Shannon had made with
7 respect to that indebtedness.
8

9 153. The issue of Jim and Shannon Young's indebtedness to Judith Young pursuant to
10 that 1996 loan was tried to the Court with the consent of both parties.
11

12 TRIAL WITNESSES

13 154. The trial of this matter occurred in March of 2005.

14 155. At the trial, Jim and Shannon Young presented the cost estimate and testimony of
15 Michael Summers, a professional cost engineer.

16 156. Mr. Summers described and provided an estimate of the cost that Judith Young
17 would have incurred to have the work performed by Jim and Shannon Young performed by a third
18 party.
19

20 157. The Court specifically finds Michael Summers' testimony, opinions, and cost
21 estimate (Defendants' Exhibit 87) to be accurate and credible.

22 158. The defendants also presented the testimony of Jan Henry.

23 159. Ms. Henry offered her opinion as to the fair market value of the property at the
24 time of its original acquisition by Judith Young.
25

26 160. In her opinion, the Thurston County property's \$1,050,000 sale price accurately
27 reflected its fair market value at the time.
28

1 161. In addition, Jan Henry opined that the Thurston County property is currently worth
2 between \$2.2 and \$2.5 million.

3 162. Jan Henry further opined that approximately \$300-\$400,000 of the increase in the
4 value of the property would have occurred even if Jim and Shannon Young had never performed
5 any work on the property.

6 163. The Court specifically finds Jan Henry's testimony and opinions to be accurate and
7 credible.

8 164. The plaintiff presented the testimony of Gene Weaver.

9 165. Mr. Weaver, who is a licenced real estate agent, testified that in his opinion the
10 current fair market value of the property is approximately \$1,150,000.00.

11 166. However, the Court finds that the comparable sales upon which Gene Weaver based
12 his opinion as to the value of the property were not truly comparable, and his testimony was
13 otherwise unreliable.

14 167. The Court specifically finds that Mr. Weaver's testimony and opinions are not
15 credible, and rejects them.

16 **FACTUAL FINDINGS RE: UNJUST ENRICHMENT**

17 168. Judith Young asked Jim and Shannon Young to perform work upon the Thurston
18 County property.

19 169. Judith Young was at all times aware of the work that Jim and Shannon Young were
20 performing at the Thurston County property.

21 170. Between July 1998 and March 2005, Jim and Shannon Young performed work
22 improving the Thurston County property that substantially enhanced its value.

1 171. It would be unjust for Judith Young to retain the value by which the work
2 performed by Jim and Shannon Young has enhanced the Thurston County property without paying
3 Jim and Shannon Young therefore.

4 172. Beginning in 1998, Judith Young repeatedly asked Jim Young to travel to Georgia
5 to perform work upon her property there, and Jim Young did so.

6 173. Judith Young was at all times aware of the work that Jim Young was performing
7 at her Georgia property.

8 174. Between July 1998 and March 2005, Jim Young performed work improving Judith
9 Young's Georgia property that substantially enhanced its value.

10 175. It would be unjust for Judith Young to retain the value by which the work
11 performed by Jim Young have enhanced the Georgia property without paying Jim Young
12 therefore.

13 176. Any finding of fact more properly characterized as a conclusion of law is hereby
14 adopted as such.

15 CONCLUSIONS OF LAW

16 Based on the foregoing findings of fact, the Court hereby enters the following conclusions
17 of law:

18 QUIET TITLE

19 1. The Court should enter an order quieting title to the Thurston County property in
20 the name of Judith Young.

1 **UNJUST ENRICHMENT--RIGHT TO RECOVER**

2 2. Jim and Shannon Young performed work for Judith Young upon her properties in
3 Thurston County and in Georgia to Judith Young's knowledge, which have substantially enhanced
4 the value of those properties.

5
6 3. Judith Young, by asking Jim and Shannon Young to perform work improving her
7 properties, impliedly promised to pay therefore.

8 4. It would be unjust for Judith Young to retain the benefit of Jim and Shannon
9 Young's work without having to pay Jim and Shannon Young therefore.

10 **UNJUST ENRICHMENT--MEASURE OF**
11 **DAMAGES--THURSTON COUNTY PROPERTY**

12 5. In an unjust enrichment case, the appropriate measure of damages is generally the
13 greater of: (1) the cost the owner would incur for the property owner to obtain the same services
14 from a third party; and (2) the amount by which the services provided have increased the value of
15 the property.

16
17 6. However, under the particular circumstances of this case, the Court declines to
18 adopt that measure of damages.

19 7. Instead, the Court concludes the gross value of the work related to the Thurston
20 County property for which Jim and Shannon Young should be entitled to recovery under the
21 theory of unjust enrichment is \$501,866.00.

22
23 8. In concluding that Jim and Shannon Young should recover based on a gross value
24 of \$501,866.00, the Court considered the following factors.

25 A. Michael Summers, the cost engineer, whose testimony the Court has
26 generally accepted as credible, testified that it would have cost Judith Young approximately
27

1 \$760,382.00 in calendar year 2000 dollars to hire a general contractor to perform the same work
2 Jim and Shannon Young in fact performed to improve her property, as set forth in his cost estimate
3 (Defendants' Trial Exhibit 87).
4

5 B. Under the circumstances of this case, the Court concludes that Jim and
6 Shannon Young should not be entitled to recover the general contractor's costs identified on page
7 9 of Mr. Summers' estimate (including mobilization/demobilization costs; the cost of providing
8 supervision, tools and general equipment; the cost for debris disposal; a markup for overhead and
9 profit; and construction contingency; the cost of bonds, insurance and business taxes; and the cost
10 of Washington State sales tax).
11

12 C. Therefore, the Court limits Jim and Shannon Young's recovery to the
13 amount of \$501,866.00.

14 **UNJUST ENRICHMENT--MEASURE OF**
15 **DAMAGES--GEORGIA PROPERTY**

16 9. The Court concludes the value of the work that Jim Young performed on the
17 Georgia property, for which he is entitled to recover, is \$40,000.00.

18 10. In reaching this conclusion, the Court considered the following factors:

19 A. The Court made no award for the work Jim Young did in clearing land on
20 Judith Young's Georgia property. Clearing land was not really a central goal of what Judith
21 Young was asking Jim Young to do in regards to helping her on the Georgia property.
22

23 B. The Court concludes that Mr. Young is entitled to recover \$30,000.00 for
24 his work building five new otter pens, plus an additional \$10,000.00 for other work that was done
25 on the Georgia property, including but not limited to the foundation work around setting up an
26 office and various road repairs.
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RECOVERY OF TAXES PAID

11. The Court concludes Jim and Shannon Young are in addition entitled to recover the \$10,677.00 in real property taxes they paid on the Thurston County property, for which they have not been reimbursed.

OFFSET

12. The Court further concludes that it should offset from the gross amount which it concludes Jim and Shannon Young are entitled to recover with respect to the Thurston County and Georgia properties payments relating to this work previously made by Judith Young to Jim and Shannon Young.

13. These payments include the following:

Date	Amount
January 2001	\$35,250.00
March 2001	\$6,009.00
June 2001	\$150,000.00
February 2002	\$87,597.00
TOTAL	\$278,856.00

14. In addition, the Court concludes that it should offset the \$2,000.00 Jim and Shannon Young received from the sale of Judith Young's horse "Tuffy."

15. In addition, the Court concludes that it should offset the \$150,000.00 principle balance due and owing on Judith Young's November 1996 loan to Jim and Shannon Young.

16. The Court concludes that the offset with respect to the November 1996 loan should be treated as if it occurred in March of 2002, such that Judith Young is not entitled to collect further interest that has accrued upon that loan since that date.

1 17. In reaching this conclusion, the Court considered the following factors:

2 A. The November 1996 loan and Jim Young's performance of the work for
3 which they are entitled to an offset are closely related. Jim and Shannon Young were encouraged
4 to perform work for Judith Young, both on her Georgia property and upon the Thurston County
5 property, by the fact that Judith Young had extended this loan.
6

7 B. Jim and Shannon Young had completed substantially all of the work for
8 which they are seeking to recover by way of unjust enrichment by March of 2002.

9 C. Michael Summers estimate of what it would have cost Judith to hire
10 subcontractors to perform the work which Jim and Shannon Young in fact performed on the
11 Thurston County property (Defendants' Trial Exhibit 87), which the Court has accepted as
12 factually accurate, is expressed in calendar year 2000 dollars. Mr. Summers testified that his cost
13 estimate would have been 15%-20% higher had it been expressed in calendar year 2005 dollars.
14

15 D. In light of the foregoing, the Court, in the exercise of its discretion,
16 concludes that the offset of the \$150,000.00 on account of Jim and Shannon Young's
17 improvements to the property should be treated as having occurred in March 2002, thereby
18 extinguishing any obligation that Jim and Shannon Young may have to pay interest payments
19 accruing since that date.
20

21 18. The Court concludes it should award Jim and Shannon Young \$13,600.50 in fees
22 incurred in responding to the late-disclosed opinions of Gene Weaver for the reasons set forth in
23 the Court's Order Granting Motion for an Award of Attorney's Fees Related to Late Disclosed
24 Opinions of Gene Weaver.
25
26
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1 19. Therefore, the Court concludes that after accounting for these offsets, the total
2 amount which the Court awards to Jim and Shannon Young to account for the value by which the
3 work performed by Jim and Shannon has enhanced the value of Judith's property, is as follows:

Award with Respect to Thurston County Property	\$501,866.00
Award with Respect to Georgia Property	+\$40,000.00
Award for Real Estate Taxes Paid	+\$10,677.00
Offset for Reimbursement Payments Already Made by Judith Young	-\$278,856.00
Offset for Sale of Horse	-\$2,000.00
Offset for November 1996 Loan	-\$150,000.00
Fees Relating to the Late Disclosed Opinions of Gene Weaver	ME \$5,000.00 +\$13,600.50
Total Judgment to James and Shannon Young	\$135,287.50

12 **RENTAL VALUE CLAIM**

13
14 20. The plaintiff, Judith Young has asked the Court to award her an offset based on her
15 claim that there is a rental value associated with the Thurston County property. The Court
16 concludes that it should not award Judith Young any such offset.

17 21. In reaching this conclusion, the Court considered the following factors:

18 A. Judith Young never asked Jim and Shannon Young to pay rent and never
19 intended that the Thurston County property generate a rental income;

20 B. There was no evidence establishing the fair market rental value of the
21 Thurston County property in light of its condition at the time Jim and Shannon Young first
22 occupied it;

23 C. It would be unfair to Jim and Shannon Young for Judith Young to recover
24 and enhanced rental value in light of the improvements made to the Ranch House by Jim and
25 Shannon Young. This would effectively permit Judith Young to charge Jim and Shannon Young
26
27
28

1 rent based on the improvements Jim and Shannon Young themselves made to the Ranch House,
2 and for which they have not yet been entirely reimbursed.

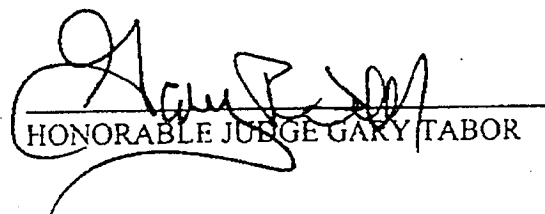
3 D. Although Judith Young attempted to offer expert testimony as to the fair
4 market value of this property in light of its current condition, the testimony established that there
5 is currently no market in Thurston County for the rental of properties of this quality.
6

7 E. The value contributed by Jim and Shannon Young's ongoing maintenance
8 of the property exceeded the rental value associated with the property.

9 22. Any conclusion of law more properly characterized as a finding of fact is hereby
10 adopted as such.

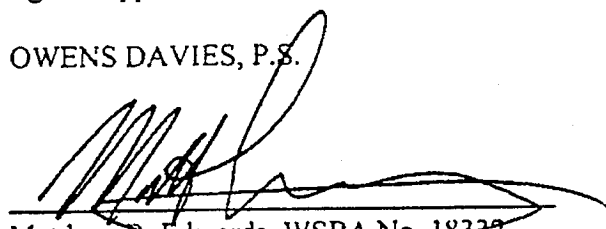
11 DATED this 15 day of April, 2005.

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HONORABLE JUDGE GARY TABOR

Approved as to form only;
right to appeal reserved:

OWENS DAVIES, P.S.


Matthew B. Edwards, WSBA No. 18332
Attorneys for Jim and Shannon Young

Approved as to form only;
notice of presentation waived:

Alan Swanson, WSBA No. 1181
Attorneys for Judith Young

FINDINGS OF FACT AND CONCLUSIONS OF LAW-29
C:\114\MBR\Young\Findings of Fact.wpd

OWENS DAVIES, P.S.
926 - 24th Way SW • P. O. Box 187
Olympia, Washington 98507
Phone: (360) 943-8320
Facsimile: (360) 943-6150

SCANNED

CP 644

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

Judith Young

Plaintiff,

vs.

James & Shannon Young

Defendants.

NO. 03-2-00937-4

**EXHIBIT LIST/STIPULATION
AND ORDER FOR RETURN OF
EXHIBITS (EXLST/STPORE)**

JUDGE Gary R. Tabor

Clerk: Doug Bales

Court Reporter: Pam Jones

Date: March 14, 2005

Type of Hearing: Bench Trial

Offered By	Number of Exhibit	Admitted? Date	Title or Name of Exhibit
Plaintiff	1		1996 Log Cabin Loan
Plaintiff	1-1	3-15-08	Part of Exhibit No. 1
Plaintiff	1-2	3-15-05	Part of Exhibit No. 1
Plaintiff	1-3		Part of Exhibit No. 1
Plaintiff	1-4		Part of Exhibit No. 1
Plaintiff	1-5	3-15-05	Part of Exhibit No. 1
Plaintiff	1-6		Part of Exhibit No. 1
Plaintiff	1-7		Part of Exhibit No. 1
Plaintiff	2		Purchase and Loan Documents
Plaintiff	3		Bank Records and Summaries James and Shannon Young
Plaintiff	4A	3-16-05	Young Ranch Account
Plaintiff	4B	3-16-05	Continuation of 4A
Plaintiff	5		Summary Compilations of Invoices, Statements, Receipts. ECT.

EXHIBIT

A

SCANNED

CP 645

Offered By	Number of Exhibit	Admitted? Date	Title or Name of Exhibit
Plaintiff	6		Expenses and Disbursements
Plaintiff	7		Insurance Records
Plaintiff	7-1		Tax Records
Plaintiff	8	3-15-05	Emails
Plaintiff	9	3-15-05	Deposits by Judy Young
Plaintiff	10	3-15-05	Miscellaneous
Plaintiff	11		Reports
Plaintiff	12	3-17-05	Jim & Shannon Young's Summary of Personal Income Tax Returns
Plaintiff	13	3-17-05	Photos
Plaintiff	14		Wetlands, Soils Report
Plaintiff	15	3-17-05	Photo
Plaintiff	16	3-17-05	Photo
Plaintiff	17	3-17-05	Photo
Plaintiff	18	3-17-05	Map
Plaintiff	19	3-17-05	Photos
Plaintiff	20	3-17-05	Table
Plaintiff	21		
Plaintiff	22		
Plaintiff	23		
Plaintiff	24		
Plaintiff	25		
Plaintiff	26		
Plaintiff	27		
Plaintiff	28		
Plaintiff	29		
Plaintiff	30		
Plaintiff	31		
Plaintiff	32		
Plaintiff	33		
Plaintiff	34		

Initial Only:

Counsel for Plaintiff _____

Counsel for Defendant _____

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SCANNED

CP 646

Offered By	Number of Exhibit	Admitted? Date	Title or Name of Exhibit
Plaintiff	35		
Plaintiff	36		
Plaintiff	37		
Plaintiff	38		
Plaintiff	39		
Plaintiff	40		
Plaintiff	41		
Plaintiff	42		
Plaintiff	43		
Plaintiff	44		
Plaintiff	45		
Plaintiff	46		
Plaintiff	47		
Plaintiff	48		
Plaintiff	49		
Plaintiff	50		

Defendant	51	3-15-05	Statutory Warranty Deed
Defendant	52	3-15-05	Statutory Warranty Deed
Defendant	53	3-15-05	Deed of Trust
Defendant	54	3-15-05	Notice of Trustee's Sale
Defendant	55	3-15-05	Trustee's Deed
Defendant	56	3-15-05	Purchase and Sale Agreement
Defendant	57	3-15-05	Purchase and Sale Agreement
Defendant	58	3-15-05	Purchase and Sale Agreement
Defendant	59	3-15-05	Special Power of Attorney
Defendant	60	3-15-05	Statutory Warranty Deed
Defendant	61	3-15-05	Statutory Warranty Deed
Defendant	62	3-15-05	Statutory Warranty Deed
Defendant	63	3-15-05	Pledge Agreement

Initial Only:

Counsel for Plaintiff _____

Counsel for Defendant _____

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SCANNED

CP 647

Defendant	64	3-15-05	Deed of Trust
Defendant	65	3-15-05	Modification of Deed of Trust
Defendant	66	3-15-05	Schedule A to Judith Anne Young Revocable Trust Agency 25286020
Defendant	67	3-15-05	Promissory Note
Defendant	68	3-15-05	Schedule of Payments on Promissory Note
Defendant	69	3-15-05	Statutory Warranty Deed
Defendant	70	3-15-05	Last Will and Testament and Codicil of Lytton J. Shields
Defendant	71	3-15-05	Selected pages of the Statement of Account for Lytton J. Shields Trust
Defendant	72	3-15-05	In re Shields, 552 N.W. 581 (1996)
Defendant	73	3-15-05	Flight Information Summary re Trips to Georgia
Defendant	74	3-15-05	Summary of work performed at Otter Conservation Center created by Judith Young
Defendant	75	3-15-05	Summary of Labor Done in Georgia
Defendant	76	3-15-05	E-mail - Date January 2, 2001
Defendant	77	3-15-05	E-mail - Date February 20, 2001
Defendant	78	3-15-05	Receipt
Defendant	79	3-15-05	E-mail - April 25, 2001
Defendant	80	3-15-05	E-mail - June 11, 2001
Defendant	81	3-15-05	Letter - February 27, 2002
Defendant	82	3-15-05	Summary of Large Equipment Purchases
Defendant	83	3-15-05	Summary of Purchase/Sold Cattle
Defendant	84	3-15-05	Letter - September 10, 2002
Defendant	85	3-15-05	Letter - April 18, 2003
Defendant	86	3-15-05	Curriculum Vitae
Defendant	87	3-15-05	Report by Michael D. Summers
Defendant	88	3-15-05	Summary of Amounts Paid in June 1998
Defendant	89	3-15-05	Comparative Market Analysis
Defendant	90	3-15-05	E-mail - October 27, 2000
Defendant	91	3-15-05	E-mail - June 8, 2001
Defendant	92	3-15-05	Accounting
Defendant	93	3-15-05	Excerpts of the Telephonic Deposition Upon Oral Examination of John L. Jerry

Initial Only:

Counsel for Plaintiff _____

Counsel for Defendant _____

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SCANNED

CP 648

Defendant	94	3-17-05	Real Estate Tax Affidavit
Defendant	95	3-17-05	Real Estate Tax Affidavit
Defendant	96	3-17-05	Real Estate Tax Affidavit
Defendant	97	3-15-05	Letter
Defendant	98	3-15-05	Photo of Young Property
Defendant	99	3-15-05	Aerial Photo
Defendant	100	3-17-05	Copy of Check
Defendant	101		Wetland Ordinance
Defendant	102		Map
Defendant	103		Ordinance 13222
Defendant	104	3-17-04	Real Estate Excise Tax Affidavit
Defendant	105	3-17-05	Plat 3217404
Defendant	106	3-17-05	Real Estate Excise Tax Affidavit
Defendant	107	3-17-05	Real Estate Excise Tax Affidavit
Defendant	108	3-17-05	Complaint
Defendant	109	3-17-05	Real Estate Excise Tax Affidavit
Defendant	110	3-17-05	Notice of Moratorium
Defendant	111	3-17-05	Real Estate Excise Tax Affidavit
Defendant	112	3-17-05	Plat 3288762
Defendant	113	3-17-05	Real Estate Excise Tax Affidavit
Defendant	114	3-17-05	Continuing Forestland Obligation

Initial Only:

Counsel for Plaintiff _____

Counsel for Defendant _____

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SCANNED

CP 649

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

JUDITH YOUNG,

Plaintiff,

vs.

JAMES M. YOUNG and
SHANNON YOUNG, et al.,

Defendants.

SUPERIOR COURT NO.
03-2-00937-4

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on March 30, 2005, the
above-entitled and numbered cause came on for hearing before
JUDGE GARY R. TABOR, Thurston County Superior Court, Olympia,
Washington.

Pamela R. Jones, Official Court Reporter
Certificate No. 2154
Post Office Box 11012
Olympia, WA 98508-0112
(360)754-3355 x6484
jonesp@co.thurston.wa.us

COPY

SCANNED

EXHIBIT B 1

CP 650

A P P E A R A N C E S

For the Plaintiff:

ALAN SWANSON
Attorney at Law
1235 Fourth Avenue, Suite 200
Olympia, WA 98502

For the Defendants:

MATTHEW EDWARDS
Attorney at Law
PO Box 187
Olympia, WA 98507

1 March 30, 2005

Olympia, Washington

2 MORNING SESSION

3 Department 7

Hon. Gary R. Tabor, Presiding

4 APPEARANCES:

5 For the Plaintiff, Alan Swanson, Attorney at Law; For the
6 Defendants, Matthew Edwards, Attorney at Law

6 Pamela R. Jones, Official Court Reporter

7 * * * * *

8 THE COURT: Good morning. We're here in the
9 matter of Young vs. Young in Cause 03-2-937-4. This is a
10 time set aside by the Court for its ruling after having
11 heard a bench trial in this particular matter. We ran
12 out of time the week that that took place, and so we've
13 scheduled today. I understand that before the Court
14 announces its decision, Mr. Swanson, you wish to make a
15 motion in regard to a quieting of title.

16 MR. SWANSON: Yes, Your Honor, thank you. I
17 think now is as good a time as any to offer to the Court
18 what I have proposed is a stipulated decree quieting
19 title. I provided a copy to Mr. Edwards sometime during
20 the week of trial, provided him a copy now. I'm unsure
21 whether he's in a position to stipulate to it or not.

22 MR. EDWARDS: Your Honor, I don't object to
23 the Court granting his relief, but I would like
24 everything entered at the same time. It's important to
25 my clients that there not be a period of time where the

1 title is out of their hands but no judgment lien against
2 the property. I don't have any objection to having it
3 entered at the same time the Court enters whatever other
4 judgment it's going to enter in this matter.

5 THE COURT: Well, it does appear that there
6 was previously an agreement that there be a document that
7 quiets title and I will sign that. I guess I'll reserve
8 when it's actually signed, be it today or tomorrow or
9 some future period. It would appear to me that the
10 Court's decision can be reduced to writing one way or the
11 other fairly quickly.

12 So, in any event, I have the original and I'll set
13 that aside for just a few moments.

14 MR. SWANSON: And one remaining matter, Your
15 Honor, I wrote the Court a short letter last week. It's
16 my understanding that the defendants are not claiming any
17 prejudice as a result of the e-mails which were forwarded
18 to them after conclusion of taking the evidence, but I
19 would seek some clarification on that.

20 THE COURT: Well, this Court gave the
21 opportunity of the defendants, if they wished, to bring
22 any matters before me about e-mails. I received a letter
23 from Mr. Edwards saying he looked at the e-mails and was
24 not going to raise any issues. So then you sent a letter
25 saying, well, does that mean that there is no claim that

1 any of those issues would have been raised had there --
2 had they come to the attention of the parties earlier,
3 and I don't know whether we need to go that far or not,
4 but let me just inquire of Mr. Edwards. You're not
5 claiming any prejudice based upon your receiving those
6 matters only after the trial was completed, are you?

7 MR. EDWARDS: Your Honor, my understanding
8 was I had the option of either putting those e-mails in
9 or not and we've elected not to. I think it would be a
10 little strong to say that we're not -- we're waiving any
11 claim of prejudice. There is relevant material in those
12 e-mails that should have been produced earlier, and if
13 they had been, we could have inquired about them and
14 submitted them as part of the trial, but, as I said in my
15 letter, I don't think at this point that there is enough
16 there to justify reopening the trial, and we're electing
17 not to put those e-mails before you.

18 THE COURT: Well, it would appear to me that
19 there would not be a claim of error if this matter were
20 to be reviewed by a higher court if the Court in any way
21 forced someone to do something they did not wish to do,
22 and as I understand it, you're saying that the trial is
23 completed and you're satisfied with the information
24 that's been provided to the Court.

25 MR. EDWARDS: Correct.

1 THE COURT: So I think that's as far as we
2 have to go, Mr. Swanson.

3 Well, Counsel, I have to always when I rule first
4 of all look myself in the mirror and be able to believe
5 that I've done the best job that I can. Certainly
6 parties may disagree, but it's also my practice to take a
7 moment as I'm announcing a decision and look the parties
8 eye to eye. And Judith is not here today so I can't do
9 that, so I guess, Mr. Swanson, you'll have to convey my
10 eye contact to her.

11 In any event, I recall as an attorney that probably
12 the hardest time for me was the time awaiting a decision
13 by the trier of fact, and usually that's a jury, and
14 awaiting a jury's decision was always just torture. It
15 was really tough for me to accomplish much of anything
16 while I was waiting for a jury to come back, and I would
17 at least infer that perhaps it's a difficult time for the
18 parties and the attorneys in this matter as well, having
19 to wait, and I was glad we were able to find this time
20 relatively quickly so that I can announce my decision.

21 This was a very interesting case in lots of ways.
22 There's some novel issues, in my opinion. There are a
23 number of things that this case is not about, and many of
24 those things that it's not about originally appeared to
25 perhaps be issues, but those were resolved either by

1 agreement of the parties or tactical decisions or the
2 Court's rulings.

3 This case at one time concerned an issue about
4 whether or not there had been a conveyance by Jim Young's
5 name appearing on the deed, and the Court ruled that
6 there was no conveyance, that there was no written
7 conveyance under the statute of frauds which requires if
8 there's real property involved that there be a writing.
9 I indicated at the time I previously ruled that there
10 might be issues about oral contracts. As this matter was
11 presented to me at trial, issues about oral contracts
12 really were no longer on the table. It was not the
13 defendants' approach any longer that there had been an
14 oral agreement that the Court would be called upon to
15 decide upon or enforce.

16 This case was unusual in that by agreement of
17 parties even though Judith Young had filed the action to
18 quiet title, there had been a counterclaim by the defense
19 so the defense went first and, basically, acted as a
20 plaintiff would by presenting evidence first and having
21 rebuttal and the same in closing arguments.

22 This Court heard testimony over a period of several
23 days. I did go to the scene of the property in Thurston
24 County and view that property. That occurred prior to
25 our taking testimony but was, nevertheless, a view by a

1 trier of fact.

2 And I listened carefully to the parties as they
3 presented evidence and I considered the parties' legal
4 arguments, both orally and the written arguments that
5 were presented to me. I received from both sides trial
6 briefs in this matter. I think it's fair to say that the
7 central issue is whether or not Jim and Shannon Young are
8 entitled to some reimbursement for work that they did for
9 Judith Young either in Thurston County, on what I'll call
10 the Thurston County property, or in Georgia.

11 Under the doctrine of unjust enrichment, I've
12 considered the case law to that effect, and I have
13 compared that to what I understand the facts to be. And
14 everybody would like me to just get to the point, so I'm
15 going to try to do that here fairly quickly.

16 I do believe that there was work done for which the
17 defendants, Jim and Shannon Young, should be reimbursed.
18 I do find that the doctrine of unjust enrichment applies
19 at least to some expenses.

20 And in saying that, one of the difficulties of the
21 Court in making rulings is making it clear what figures
22 are involved. And someday maybe we'll have a courtroom
23 that has visual equipment that I can simply put something
24 up there. I have run off a copy -- this is not an
25 official court document but this is just for the parties

1 so you'll see what I've done, and I want to spend a few
2 moments going through that but I'll ask that copies of
3 that be provided to Counsel. That's at the risk of you
4 spending all your time now looking at the bottom line
5 instead of hearing anything that I say from this point
6 forward, but I thought it best to go ahead and give it to
7 you.

8 First of all, as to the amount of reimbursement
9 that Jim and Shannon Young are entitled to in the
10 Thurston County property, I want to call your attention
11 to Exhibit No. 87, first of all, so if you have Exhibit
12 87 before you, you can follow along. If you do not, I
13 think it's going to be clear what I've chosen to do.

14 I heard the testimony of the defense expert as to
15 his evaluation of the cost of the work done. And I'll
16 tell you that, for the most part, I accepted that
17 expert's opinion about the cost of work done. However,
18 when we get to the last page, and that's Page 9 of
19 Exhibit No. 87, I did not agree with a number of things
20 that that expert believed should be considered by the
21 Court.

22 First of all, the subtotal of the work, the actual
23 work done and its value, according to that expert, was
24 \$501,866. He then went on to say that there would be
25 things like mobilization and demobilization, supervision,

1 tools and general equipment, debris disposal, overhead
2 and profit. If a contractor had been in charge of
3 various subcontractors, a contingency fee of 5 percent
4 called a construction contingency fee, Washington State
5 sales tax, bonds, insurance, business taxes and so forth.
6 None of that money was expended.

7 This situation is somewhat unusual in that
8 Mr. James Young was, while he was a licensed and bonded
9 contractor in certain regards, was not for construction
10 but rather for his business of doing land-clearing and
11 also excavation, as I understand it. I don't feel it
12 appropriate to award any of those costs that a general
13 contractor would have perhaps incurred based upon the
14 facts before me. Mr. Young was residing on the property,
15 based upon, well, the facts in this case, and perhaps
16 I'll address those a little more here in a few moments.

17 In any event, it appears to me that rather than the
18 \$760,000 that the expert testified to, the Court is well
19 within its discretion to award a lesser amount and a more
20 appropriate amount of \$501,866.

21 Now, as to the Georgia property, you may wish to
22 refer to Exhibit No. 75 in that regard. That exhibit was
23 primarily Mr. Young's estimate of the work, value of work
24 that he did in Georgia. First of all, the testimony that
25 the Court heard was that Mr. Young first voluntarily went

1 to Georgia and paid his own way to get there, to show
2 interest in what was going on in Judith Young's life and
3 to see her setup there for the otter farm in Georgia, and
4 while there he made various suggestions about things that
5 could be done, and apparently they discussed improvements
6 that could be made to the otter pens. At one point he
7 brought a friend back and performed work to upgrade
8 various pens.

9 At one point there was a conversation, which I
10 think all three agreed that there was at least a
11 conversation about whether or not Mr. Young would be
12 paid. The divergence in testimony there was whether or
13 not there was actually a promise given, and this Court,
14 as I say, was not called upon to decide whether there
15 were any verbal contracts, so I'm not making a decision
16 about what was said or not said in regard to any oral
17 agreement. On the other hand, it appears clear that
18 there was at some point an offer by Judith Young to pay
19 Jim Young and that was declined, for whatever reason, and
20 as I say, perhaps I'll discuss that a little later.

21 In looking at these charges I'll tell you that one
22 of the areas here is \$50,000 for cleared land. I heard
23 very little testimony about that. I don't see that
24 clearing land was really a central goal of what Judith
25 Young was asking James Young to do in regard to helping,

1 and the figure that's listed there is basically what
2 Mr. Young says he would have charged for 40 acres
3 clearing under his usual course of business. I've
4 disregarded that. I'm not going to require reimbursement
5 for that.

6 Likewise, I'll tell you that up until the time that
7 Mr. Young was called upon to come in what I was told at
8 an inconvenient time for him in 2001, and when he went in
9 both March and April to construct some new pens it
10 appears that for whatever reason he chose not to ask for
11 reimbursement when it was offered. He said that's not
12 necessary.

13 In any event, the figure that I've listed here is
14 \$40,000. That's basically \$30,000 for building five new
15 pens plus an additional \$10,000 for various work that was
16 done, primarily the foundation work around setting up an
17 office and various road repairs. In any event, that's
18 perhaps a subjective figure on my part. But this whole
19 case is an issue of equity, and the Court is given great
20 discretion and so subjective decisions are what's to be
21 expected. I've given this my best consideration.

22 The Court then will note that the total amount for
23 reimbursement that I found under the doctrine of unjust
24 enrichment is \$541,866. However, there are clearly
25 offsets that need to be taken into account. Both parties

1 argued those offsets to me. Let me tell you how I
2 arrived at the figure of \$298,711.

3 That's primarily information that I gleaned from
4 several sources, and I've added an additional figure
5 there and I'll tell you about that as soon as I find the
6 right sheet there. There was \$6,009 for well work.
7 There was \$150,000 that was conveyed for the cattle ranch
8 as an advance by Judith Young for her part of the
9 so-called cattle ranch agreement. There was an amount of
10 \$87,597 was reimbursement, according to figures provided
11 by James and Shannon Young, and there was reimbursement
12 of \$35,250.

13 There's one other figure that I factored in there.
14 Those figures add up to \$278,856, and that's the amount
15 claimed in the exhibit and I will find that in just a
16 moment. The reimbursement of the \$87,000 is the exhibit
17 I'm looking for here. That's Exhibit 81.

18 Jim and Shannon Young agreed that the Service Pro
19 cleanup fee had already been reimbursed to them by
20 insurance and that's \$19,914.92, and I've added that
21 figure back in because Ms. Young paid that as part of the
22 reimbursement she was requested and it had already been
23 paid. So, she's entitled not only to her reimbursement
24 back but to be compensated for the money that had come
25 from insurance as to damage to the property that she

1 owned. So I've added that figure on and that comes up to
2 the figure \$298,711.

3 There's then the log house loan that was made in
4 1996, and it would appear to me that even though that
5 loan said that it was only -- well, it could be interest
6 only for a period of 10 years, and we've actually not
7 reached that 10-year period, when principle is due and
8 owing that appears to be an appropriate offset in this
9 particular case. I'm not dealing with interest; that's a
10 different issue. I'm only dealing with the amount that
11 was loaned, and the principle in that regard.

12 There was also the sale of the horse. I heard
13 testimony that it was sold for \$1,000. Everybody agreed
14 it clearly belonged to Judith Young. Then I heard
15 testimony by the buyer that he paid \$2,000 for the horse
16 and I didn't hear any rebuttal on that. I've assigned
17 the figure of \$2,000. And then added back in what would
18 be property taxes that were paid by Jim and Shannon Young
19 of \$10,677.

20 Thus, the Court's total award based upon the amount
21 of reimbursement that I've calculated as unjust
22 enrichment with offsets that Judith Young has either paid
23 or is entitled to, as well as property taxes that the
24 Young's paid, the total award is \$101,822.

25 Now let me say a few other things about what this

1 case was not about. This case is not about who's a good
2 person or who's a bad person. I recognize that when a
3 court hears testimony that one of its goals or jobs is to
4 rule on the credibility of people, but one can't always
5 ascribe particular motives to a thing that was done,
6 there might be arguments, and what I heard from both
7 sides was arguments about motives for various things that
8 were done.

9 If I can characterize this case, it would be using
10 an example that I already mentioned once before in this
11 case I think back when I was ruling in summary judgment.
12 I said it's two ships passing in the night. That's
13 really what I think this case was. I think that there
14 were some discussions that people didn't go into detail
15 about things that were said or perceived.

16 It's human nature when someone hears someone else
17 say something that they may construe that in the light
18 most favorable to them. We hear what we want to hear.
19 There's no doubt in my mind but that Jim and Shannon
20 Young heard what they wanted to hear in regard to this
21 so-called agreement about the cattle ranch. There's no
22 doubt in my mind that Jim Young heard what he wanted to
23 hear from Judith Young, and he believed that he was going
24 to be taken care of; exactly how, I'm not of the opinion
25 that even he was even sure. It was somewhat esoteric,

1 but he believed that was going to happen. But it was not
2 for me to decide, as I've said, about any verbal
3 contracts.

4 This is more about expectations, and even
5 expectations do not determine the final outcome of this
6 case. What's clear to me is that property in this case
7 was purchased in 1998, and I'm talking about the Thurston
8 County property, for \$1,050,000, and we heard testimony
9 from Ms. Henry that that was the fair market value of the
10 property or very close thereto. When I add up the monies
11 that were invested over a period of time by Judith Young,
12 the figures that I've already reiterated expended prior
13 to this trial is about \$1,328,856. Well, that's not
14 about -- that's the figure that I came up with.

15 The reimbursement figure that I've spoken of here,
16 although there were other offsets, was really that third
17 figure down, \$243,155. And when you add that up, that
18 means that she spent \$1,571,011.

19 What's the property value? I heard testimony from
20 experts by both the defense and the plaintiff and they
21 were at odds. Mr. Knight says the property is worth, in
22 his opinion, about \$1,150,000.

23 Mr. Edwards, I'll tell you that I believe you did a
24 commendable job pointing out that Mr. Knight did not take
25 into account a number of factors that should have been

1 considered in regard to his comparables, and in almost
2 every one of those comparables there was a problem. I'm
3 inclined to believe that Jan Henry's estimate, the
4 estimate of the defense, is much closer to reality, and
5 her opinion is \$2.2 to \$2.5 million. I don't know what
6 the property is ultimately going to be worth. As someone
7 has said, the real test of what property is worth is what
8 it sells for.

9 I'm told that Ms. Young is going to be listing the
10 property for sale or she's going to be selling it.
11 Clearly there are expenses in regard to selling property.
12 There's a real estate fee if listed by a realtor, there
13 are other costs that must be incurred, and so, the actual
14 net of any sale price is I guess really the bottom line
15 as far as Mrs. Young is concerned.

16 Why do I mention sale price? While the doctrine of
17 unjust enrichment says the value of the services or the
18 improved value of the property, whichever is greater,
19 that does not deal with equity because the third prong of
20 an unjust enrichment would be taking into account what's
21 fair, I would not think it fair if the value of
22 improvements far exceeded value of the property. I don't
23 find that here. It seems to me that the value of the
24 improvements clearly are taken into account in an
25 enhanced value to the property over the years.

1 Now, you heard my question of a witness about what
2 about simply inflation, if you will, I didn't use that
3 term, but whatever just the value of property increasing.
4 And I think that certainly a substantial portion of the
5 property's value today is due to the fact that property
6 values have just gone up, they are not making any more
7 property. On the other hand, the value to the house and
8 the outbuildings and the land immediately surrounding
9 those buildings clearly has been significantly enhanced
10 by the work that Jim and Shannon Young did.

11 I was talking a few moments ago about motives of
12 persons, and I said it wasn't for me to decide. The
13 parties here are human beings and everybody has their own
14 situations. They have good points and bad points; I
15 think it's fair to say everyone does. They have
16 qualities that are commendable and other qualities that
17 someone might criticize, and it's not my place here to
18 judge people, but I did want to indicate that in regard
19 to Judith Young, it's clear that she is a loving person
20 in many ways that she deeply cares for animals. And
21 while it's not an issue, in my opinion, and I ruled in
22 pretrial that we weren't concerned about one's financial
23 abilities, the fact that Ms. Young may have a substantial
24 yearly income is not really the issue.

25 On the other hand, to look at Ms. Young and her

1 lifestyle versus what others in her situation might
2 choose, is rather commendable, in the Court's opinion.
3 It appears that she was a generous person and she was
4 willing to reach out to Jim and Shannon in a number of
5 ways. Not only was there money that she conveyed to them
6 as a gift that I heard some reference to, but there was
7 her agreement to loan them money. There was also the
8 fact that when they turned in particular requests for
9 being reimbursed, she paid without question. She didn't
10 ask for any further accounting. All of those are
11 admirable qualities.

12 As to Jim and Shannon Young, the quality that
13 stands out, in my opinion, is their work ethic and the
14 fact that they are clearly hard workers. I'll tell you
15 that my view of the scene was very enjoyable. I enjoyed
16 seeing the property and I was very impressed with its
17 appearance.

18 While this Court is not an expert in construction
19 standards, it was clear to me that the improvements that
20 have been made were quality improvements, and I think
21 that was testified to by the experts as well, that those
22 improvements were well done, they were done in a manner
23 consistent with being very professional.

24 One of the issues that Mr. Swanson raised is if I
25 were going to consider offsets I consider an offset for

1 the fair rental value of the property, and it's clear
2 based upon my giving you this cheat sheet or sheet to
3 assist you that I've not factored that in, and I want to
4 tell you why. First of all, Ms. Judith Young did not
5 appear to be concerned about the property sitting there
6 without the otter farm getting started initially on. She
7 didn't appear to be in any rush. She testified that she
8 thought that that might take some time. She didn't
9 indicate that it was her idea that the Youngs move onto
10 the property, it was their idea, but they discussed it
11 with her and she had no problem with that. There was
12 never any discussion of fair rental value.

13 I heard testimony from experts that the fair rental
14 value could be anything from just over \$3,000 to about
15 \$1,500 per month. On the other hand, this Court believes
16 that there would have to be consideration if one were
17 looking at that to the value of keeping the property
18 safe, if you will, a watchman-type situation. Often I
19 think in other situations people don't do anything to
20 property but watch it and receive compensation. That was
21 one factor.

22 Another factor was the regular maintenance that was
23 done. When hay grows, it either has to be cut or it's
24 going to be overgrown. When a driveway area is
25 constructed with bricks, those bricks are going to be

1 pushed up by the growth of vegetation unless that's
2 maintained and that had happened before. When there are
3 roads, roads deteriorate. When there are fences, fences
4 run down unless maintained. When there are buildings,
5 those buildings have maintenance, and it was clear to me
6 that this property had not only been updated by the
7 general improvements that I've addressed, but that there
8 was ongoing maintenance.

9 Finally, as to ongoing maintenance, there was
10 discussion about the tansy being pulled and someone would
11 have to be doing that or there would be the county
12 stepping in and doing it and charging someone for it.
13 All those factors led me to believe that what's fair here
14 is for there not to be any compensation for the rental
15 value required of the Youngs.

16 That kind of goes back to the same type of analysis
17 that I used as to the Georgia property, that a lot of
18 what was done in the Georgia property was done by
19 Mr. Young basically as goodwill. He simply did it and he
20 didn't ask for reimbursement; he turned it down when
21 offered.

22 It appears to me that, likewise, the rental value,
23 Ms. Judith Young never asked for rent. She never
24 discussed that project at all, it was something she did
25 not seem concerned about, and thus, I'm not factoring

1 that in in any way, shape or form.

2 I can't make anybody feel a particular way. One of
3 the things that I've tried to resolve in my own mind as a
4 judge is that people have a right to feel the way they
5 feel. I'm sorry to see families when they grow apart or
6 when they have disagreements that push them apart. I
7 wish it could be otherwise. Life is too short, in this
8 Court's opinion, for people to let animosity really
9 interfere with the way they live life, but day after day
10 people come before a court and they hire attorneys and
11 they present positions to the court based upon how they
12 see things.

13 Both sides in this particular case have had their
14 own opinions about how things were. While I've not
15 followed anybody's particular opinion, it would appear
16 that I've certainly awarded monies under unjust
17 enrichment that make the defendants in this case the
18 prevailing party. They do prevail in regard to the issue
19 of being entitled to reimbursement after offsets are
20 considered. On the other hand, Ms. Young has prevailed
21 and it was acknowledged even before the trial started
22 that title in this particular case to the Thurston County
23 property should be quieted and I've already said that
24 that is appropriate to do.

25 So it seems to me that I've covered what I've

1 chosen to do in this case. I've given you some of the
2 reasons for it, and I don't suggest that I understand
3 every aspect of what all this means for the future.
4 There is one issue that I would like to hear the parties'
5 input on, and that is, whether or not a judgment in this
6 case would appropriately involve some type of lien or
7 equitable trust. I think that's Mr. Edwards' position,
8 but I'll hear from him in that regard and then I'll hear
9 from Mr. Swanson before I make any decision in that
10 regard.

11 MR. EDWARDS: Your Honor, we would like the
12 Court to impose a constructive trust on the property or
13 the proceeds of this sale to make sure this judgment is
14 satisfied so we don't have to go to a different state to
15 attempt to collect it. I'm not sure if that's going to
16 be an issue or not, maybe Mr. Swanson can address that,
17 but absent some other arrangement we would ask the Court
18 to impose a constructive trust under the cases I cited to
19 you, and the recent Washington Court of Appeals case
20 involving the parents of the daughter, the Court has the
21 discretion to do that as part of its decision.

22 THE COURT: Mr. Swanson?

23 MR. SWANSON: Thank you, Your Honor. I
24 suppose part of the question will depend upon whether
25 Mr. Edwards and I can agree to the entry of a judgment

1 without submission of findings and conclusions, whether
2 or not we can yield the ground on any issues of appeal.
3 It would be my sense that I could hope we could enter
4 into that agreement.

5 With that understood, as the Court is well aware,
6 entry of any judgment automatically operates as a
7 judgment lien on any real estate in this county owned by
8 the judgment debtor. So I would suggest that that will
9 suffice and that the Court need not exercise any
10 discretion as Mr. Edwards suggests. I cannot represent
11 what Ms. Young will do, but it would be my understanding
12 that this is going to be -- that the Court's award here
13 will be taken care of. So, I think the Court need not
14 take that next step. I think the entry of a judgment
15 satisfies the concerns of defendant. No title company
16 will convey this property to any other purchaser without
17 this judgment being addressed. Thank you.

18 THE COURT: All right. Well, my thinking is
19 that that's probably true, Mr. Swanson, that indeed, a
20 judgment would be something that attaches to the property
21 that's owned here. If I'm mistaken in that regard, more
22 authority could be given to me, but it would be my intent
23 and I'd state that on the record, that this award be
24 taken care of when the property is sold. There are some
25 other issues about selling the property.

1 We heard testimony that property that's occupied is
2 going to sell for a higher value than that that isn't. I
3 understand that perhaps by simply not discussing the
4 case, or maybe it was the attorneys intending this, that
5 status quo has been preserved during the course of this
6 trial, and parties may take some position about whether
7 or not Jim and Shannon Young are going to have to move or
8 stay there while the property is listed. I'm not getting
9 in the middle of that. I've not made any decision about
10 that at all and that's up to the parties as far as I'm
11 concerned for the future.

12 Now, as to the equitable or, I should say, the
13 quieting title, I don't understand perhaps all of the
14 ramifications of quieting title before a judgment is
15 entered. But I don't think there was any disagreement
16 about quieting title. I don't really see any reason why
17 I should not sign the order quieting title even though
18 there's not an order today as to the judgment.

19 Mr. Edwards?

20 MR. EDWARDS: The problem with that, Your
21 Honor, is the title will transfer before the Court
22 actually enter a judgment, then there would be no
23 judgment lien that attaches to the property and the Court
24 would also lose its ability to impose a constructive
25 trust. Again, I don't have any problem with the Court

1 entering an order quieting title, I just would
2 respectfully request that that occur at the same time the
3 Court enters the monitory judgment so both of those
4 things attach to this property at the same time.

5 THE COURT: Well, counsel hadn't had a
6 chance to talk about whether or not you're going to agree
7 to the form of an order. My own thinking is that you
8 need not have findings and conclusions in a written order
9 because the Court announced those earlier here today.

10 The bottom line is I did find for the defendants
11 under the doctrine of unjust enrichment in a particular
12 amount and that's what the judgment should say. If
13 that's the case and parties agree to that, then I think
14 that an order could be prepared in the next day or so.
15 And so I guess I'll hold off for a couple days on signing
16 this order in the hope that that will spur everybody on
17 to getting that order presented to me and we can deal
18 with it all at the same time. If that doesn't happen,
19 then I'll entertain Mr. Swanson's motion at some point to
20 consider entering it even though we don't have that
21 judgment order.

22 Anything else we need to address?

23 MR. SWANSON: No, Your Honor.

24 MR. EDWARDS: No, Your Honor.

25 THE COURT: Counsel, thank you very much for

1 an interesting case, and I'll say to you, Mr. Swanson, if
2 you'll please convey to Ms. Judith Young my hope that her
3 future goes well, best wishes for her and her endeavors
4 in the future, and to Jim and Shannon Young, I wish you
5 both the best as well. We'll be in recess.

6 MR. SWANSON: Thank you, Your Honor.

7 (Court in recess.)
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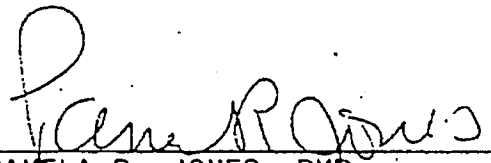
CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
COUNTY OF THURSTON)

I, PAMELA R. JONES, RMR, Official Reporter of
the Superior Court of the State of Washington, in and for
the County of Thurston, do hereby certify:

That I was authorized to and did
stenographically report the foregoing proceedings held in
the above-entitled matter, as designated by Counsel to be
included in the transcript, and that the transcript is a
true and complete record of my stenographic notes.

Dated this the 4th day of April, 2005.


PAMELA R. JONES, RMR
Official Court Reporter
Certificate No. 2154

APPENDIX B

FILED
SUPERIOR COURT
HURSTON

'05 APR 15 AIO:10

BY _____ 4
DEPUTY

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

JUDITH YOUNG,

Plaintiff, NO. 03-2-00937-4

vs.

JUDGMENT QUIETING TITLE AND
AWARDING DAMAGES

JAMES M. YOUNG and SHANNON YOUNG,
husband and wife; and STATE OF
WASHINGTON, DEPARTMENT OF LABOR &
INDUSTRIES,

Defendants.

I. JUDGMENT SUMMARY

1. Judgment Creditor: James M. and Shannon Young
2. Judgment Creditor's Attorney: Matthew B. Edwards
Owens Davies, P.S.
3. Judgment Debtor: Judith Young
4. Principal judgment amount: ~~\$135,287.50~~ **\$126,687.00** *me*
5. Interest to date of judgment: \$-0-
6. Attorney Fees: \$-0-
7. Costs: \$3,830.43
8. Other amounts: \$-0-

65-9-00375-1

JUDGMENT QUIETING TITLE AND AWARDING DAMAGES - 1
C:\4\MBH\Young\Plgds Judgment.wpd

OWENS DAVIES, P.S.
926 - 24th Way SW • P. O. Box 187
Olympia, Washington 98507
Phone: (360) 943-8320
Facsimile: (360) 943-6150

ORIGINAL

CP 684

1 9. Interest percentage on judgment 12%

2 10. Interest on attorney fees N/A

3 **II. JUDGMENT**

4 This matter came on regularly for trial on March 14-18, 2005. The Court announced its
5 oral decision on March 30, 2005.

6 Today, immediately prior to entering its judgment, the Court heard argument on the
7 following motions:

8 1. Jim and Shannon Young's Motion for Reconsideration re Double Credit for
9 ServPro Invoice;

10 2. Motion for an Award of Attorney's Fees Related to Late Disclosed Opinions of
11 Gene Weaver;

12 3. Judith Young's Motion for Clarification Regarding Delinquent Interest Payments.

13 In addition, the Court heard argument on the presentation of written findings of fact and
14 conclusions of law, and entered the same.

15 Based on the foregoing, the Court hereby directs the Clerk to enter a judgment, and enters
16 judgment, as follows:

17 1. The Court hereby QUIETS TITLE to Judith Young, and free of any right, claim or
18 interest asserted by Jim or Shannon Young (except for the judgment lien arising from the entry of
19 the Court's monetary judgment herein) to the following described real property:

20 Parcel A:

21 The west half of the Northeast quarter, and that part of the east quarter of the
22 Northwest quarter of Section 14, Township 16 North, Range 2 West, W.M., lying
23 Northerly of Creek; excepting therefrom county road known as 143rd Avenue
24 (formerly McDuff Road) along the North boundary.

1 Parcel B:

2 Parcel 1 of Large Lot Subdivision No. LL-0525, as recorded June 23, 1989 in
3 Volume 3 of Large Lot Subdivision, pages 451 through 453 inclusive, under
4 Recording No. 8906230062, Records of Thurston County Auditor.

5 Parcel C:

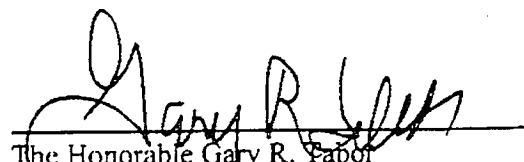
6 Parcel 2 of Large Lot Subdivision No. LL-0525, as recorded June 23, 1989 in
7 Volume 3 of Large Lot Subdivisions, pages 451 through 453 inclusive, under
8 Recording No. 8906230062, Records of Thurston County Auditor.

9 2. The Court hereby ENTERS A MONETARY JUDGMENT in favor of Jim and
10 Shannon Young, husband and wife, and against Judith Young, a single individual, in the principal
11 amount of ~~\$135,287.50~~ ^{126,697.00}. In addition, the Court hereby enters a monetary judgment in favor of Jim
12 and Shannon Young, husband and wife, and against Judith Young, a single individual, for costs,
13 in the amount of \$3,830.43. Interest shall accrue on all amounts awarded herein from the date of
14 entry of this judgment at the rate of 12% per annum, until paid.

15 3. The Court hereby DECLARES that any indebtedness or claimed indebtedness owed
16 by Jim and Shannon Young to Judith Young is hereby extinguished. The indebtedness
17 extinguished includes any and all claims for principal, interest, attorneys fees, or costs, arising out
18 of the loan of \$150,000.00 from Judith Young to Jim and Shannon Young in November 1996,
19 and/or any and all claims on account of or arising out of that Promissory Note dated November
20 21, 1996, a copy of which is attached hereto as Exhibit A.


21 4. The Court ORDERS Judith Young to file the original of said Promissory Note in
22 the Court file in this action within 30 days of the date of entry of this order.
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1 DATED this 15 day of April, 2005.

2
3
4 
The Honorable Gary R. Fabor

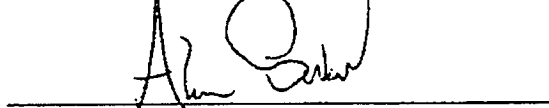
5 Presented by;
6 Right to Appeal Reserved:

7 OWENS DAVIES, P.S.

8 
9
10 Matthew B. Edwards, WSBA No. 18332
11 Attorneys for James M. and Shannon Young

12 Approved as to form;
13 Notice of Presentation Waived:

14 LAW OFFICES OF R. ALAN SWANSON, P.L.L.C.

15 
16 R. Alan Swanson, WSBA No. 1181
17 Attorneys for Judith Young

APPENDIX C

03/04

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YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
1	House (general)	4,800	S F			
	Replace Furnace	1	L S	11,296.00	\$11,296	Sunset Air
	Window Coverings	1	L S	213.00	\$213	Home Depot
	Relocate Furnishings during Construction	1	L S	2,000.00	\$2,000	Estimate 2 hours/week x 50 weeks
	Daily Cleanup during Construction	1	L S	5,000.00	\$5,000	Estimate 5 hours/week x 50 weeks
2	Subfloor					
	New Gas Lines for Appliances & Fireplace	1	L S	511.00	\$511	Suburban Propane
3	Front Entryway	112	S F			
	Remove Underlayment & Carpet	112	S F	0.50	\$56	
	Remove & Replace GWB Walls	270	S F	1.30	\$351	
	Remove & Replace Insulation	270	S F	0.80	\$216	
	Remove Plates, Grilles, etc.	1	L S	30.00	\$30	
	Texture Walls	270	S F	0.15	\$41	
	Remove & Replace & Trim	70	L F	3.00	\$210	
	Paint Walls, Ceilings, Doors & Trim	382	S F	0.70	\$267	
	New Underlayment & Slate Tile	112	S F	10.00	\$1,120	
4	Green Room	398	S F			
	Remove Underlayment & Carpet	398	S F	0.50	\$199	
	Rebuild Archways	2	E A	500.00	\$1,000	
	Repair Large Window Liner	28	L F	3.00	\$84	
	Replace Side Windows	2	E A	300.00	\$600	
	New French Door Assemblies	2	E A	600.00	\$1,200	
	Remove & Replace GWB Ceiling	398	S F	1.60	\$637	
	Remove & Replace Light Fixtures	1	L S	45.00	\$45	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	60.00	\$60	
	Remove & Replace Insulation	398	S F	1.00	\$398	
	Remove & Replace Trim	116	L F	3.00	\$348	
	Texture Ceiling	398	S F	0.20	\$80	
	Paint Ceilings & Trim	514	S F	0.80	\$411	
	New Wallpaper	598	S F	1.00	\$598	
	New Underlayment & Carpet	398	S F	5.00	\$1,990	

03/04

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YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
5	Dining Room					
	Remove & Replace Subfloor	360	SF			
	Remove Underlayment & Carpet	360	SF	1.60	\$576	
	Remove & Replace Insulation	360	SF	0.50	\$180	
	Paint Ceiling & Trim	360	SF	0.90	\$324	
	Remove & Replace Trim	360	SF	0.80	\$288	
	Remove & Replace Trim	100	LF	3.00	\$300	
	New Underlayment & Pergo	360	SF	7.00	\$2,520	
6	SE Bed/Bath					
	Remove Underlayment & Carpet	176	SF			
	Remove Ceramic Tile Floor	176	SF	0.50	\$88	
	Remove & Replace GWB Walls	50	SF	1.00	\$50	
	Remove & Replace GWB Ceiling	686	SF	1.30	\$892	
	Remove & Replace Light Fixtures	243	SF	1.60	\$389	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	0.45	\$0	
	Remove & Replace Insulation	1	LS	60.00	\$60	
	Texture Walls & Ceiling	929	SF	0.90	\$836	
	Remove, Strip, Refinish & Replace Doors	929	SF	0.12	\$111	
	Remove & Replace Trim	4	EA	100.00	\$400	
	Paint Walls, Ceilings & Trim	160	LF	3.00	\$480	
	New Underlayment & Pergo	929	SF	0.70	\$650	
	New Sheet Vinyl Flooring	176	SF	7.00	\$1,232	
		68	SF	8.00	\$544	
7	Office					
	No Work Done	0	LS	0.00	\$0	
8	S Bed/Bath					
	Remove & Replace Bath Subfloor	65	SF			
	Remove Underlayment & Carpet	65	SF	1.60	\$104	
	Remove Ceramic Tile Floor	127	SF	0.50	\$64	
	Remove & Replace GWB Walls	65	SF	1.00	\$65	
	Remove & Replace GWB Ceiling	500	SF	1.30	\$650	
	Remove & Replace Light Fixtures	177	SF	1.60	\$283	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	45.00	\$45	
		1	LS	60.00	\$60	

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YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
8	S Bed/Bath (cont)					
	Remove & Replace Insulation	742	SF	0.90	\$668	
	Texture Walls & Ceiling	692	SF	0.12	\$83	
	Remove, Strip, Refinish & Replace Doors	4	EA	100	\$400	
	Remove & Replace Window Liners	40	LF	5.00	\$200	
	Remove & Replace Trim	120	LF	3.00	\$360	
	Remove & Replace Toilet	1	EA	500.00	\$500	
	Paint Walls, Ceilings & Trim	692	SF	0.70	\$484	
	New Underlayment & Pergo	127	SF	7.00	\$889	
	New Sheet Vinyl Flooring	50	SF	6.00	\$300	
9	Laundry					
	Remove & Replace Subfloor	75	SF			
	Remove Underlayment & Flooring	40	SF	1.60	\$64	
	Patch Walls	75	SF	0.70	\$53	
	Remove & Replace GWB Ceiling	1	LS	40.00	\$40	
	Remove & Replace Light Fixture	75	SF	1.60	\$120	
	Remove & Replace Plates, Grilles & Diffusers	1	EA	30.00	\$30	
	Remove & Replace Insulation	1	LS	30.00	\$30	
	Texture Walls & Ceiling	40	SF	0.90	\$36	
	Remove, Strip, Refinish & Replace Doors	360	SF	0.12	\$43	
	Remove & Replace Trim	3	EA	100.00	\$300	
	Paint Walls, Ceilings & Trim	120	LF	3.00	\$360	
	New Underlayment & Tile	360	SF	0.70	\$252	
		75	SF	8.00	\$600	
10	Sun Room					
	Remove Floor Tile	416	SF	0.80	\$333	
	New Tile Floor & Base	416	SF	7.00	\$2,912	
	New Base Tile	100	LF	5.00	\$500	
11	Kitchen					
	Remove & Replace Subfloor	349	SF	1.60	\$558	
	Remove Underlayment & Flooring	349	SF	1.10	\$384	
	Remove & Replace Interior Walls	150	SF	5.00	\$750	

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YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
11	Kitchen (cont)					
	Remove & Replace GWB Walls	813	SF	1.30	\$1,057	
	Remove & Replace Dropped Ceiling	175	SF	1.60	\$280	
	Remove & Replace GWB Ceiling	175	SF	1.60	\$280	
	Remove Old Cabinets & Countertops	46	LF	10.00	\$460	
	New Cabinets & Countertops	1	LS	13,824.00	\$13,824	Lumbermen's Building Centers
	Remove & Replace Light Fixtures	1	LS	300.00	\$300	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	90.00	\$90	
	Remove & Replace Insulation	1,662	SF	0.90	\$1,496	
	Remove & Replace Skylight & Well	2	EA	600.00	\$1,200	
	Remove & Replace Appliances	1	LS	18,153.00	\$18,153	McKinney's Appliance, Black Diamond Roofing
	Gas Piping	See Above		0.00	\$0	
	Texture Walls & Ceiling	1,162	SF	0.12	\$139	
	Reframe Garden Window	1	EA	500.00	\$500	
	Remove & Replace Trim	200	LF	3.00	\$600	
	Paint Walls, Ceilings & Trim	1,162	SF	0.70	\$813	
	New Underlayment & Slate Tile	349	SF	10.00	\$3,490	
12	Living/Bar					
	Remove & Replace Subfloor	558	SF	1.60	\$893	
	Remove Underlayment & Flooring	558	SF	0.60	\$335	
	Remove & Replace GWB Walls	1,099	SF	1.30	\$1,429	
	Remove & Replace GWB Ceiling	558	SF	1.60	\$893	
	Remove & Replace Light Fixtures	1	LS	60.00	\$60	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	60.00	\$60	
	Remove & Replace Insulation	2,215	SF	0.90	\$1,994	
	Remove & Replace Window	1	EA	300.00	\$300	
	Texture Walls & Ceiling	1,657	SF	0.12	\$199	
	Remove & Replace Trim	150	LF	3.00	\$450	
	Paint Walls, Ceilings & Trim	1,657	SF	0.70	\$1,160	
	New Underlayment & Carpet	528	SF	5.00	\$2,640	
	New Slate Tile @ Fireplace	40	SF	12.00	\$480	

03/04

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YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
13	Library					
	No Work Done	0	L S	0.00	\$0	
14	NW Hallway					
	Remove Underlayment & Flooring	52	S F	0.60	\$31	
	Remove & Replace Trim	90	L F	3.00	\$270	
	Paint Trim	90	L F	0.50	\$45	
	New Underlayment & Carpet	52	S F	5.00	\$260	
15	NW Bed/Bath (unfinished)					
	Remove Underlayment & Carpet	218	S F	0.50	\$109	
	Remove Ceramic Tile Floor	55	S F	1.00	\$55	
	Remove & Replace GWB Walls	680	S F	1.30	\$884	
	Remove & Replace GWB Ceiling	273	S F	1.60	\$437	
	Remove & Replace Light Fixtures	1	L S	60.00	\$60	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	45.00	\$45	
	Remove & Replace Insulation	953	S F	0.90	\$858	
	Remove Tub Enclosure	1	E A	90.00	\$90	
	Texture Walls & Ceiling	953	S F	0.12	\$114	
	Remove, Strip, Refinish & Replace Doors	4	E A	100.00	\$400	
	Remove & Replace Trim	160	L F	3.00	\$480	
	Paint Walls, Ceilings & Trim	953	S F	0.70	\$667	
	New Underlayment & Pergo	218	S F	8.00	\$1,744	
	New Sheet Vinyl Flooring	55	S F	6.00	\$330	
16	Master Bed/Bath					
	Remove Underlayment & Carpet	390	S F	0.50	\$195	
	Remove & Replace GWB Ceiling	555	S F	1.60	\$888	
	Remove & Replace Light Fixtures	1	L S	60.00	\$60	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	90.00	\$90	
	Remove & Replace Insulation	555	S F	0.90	\$500	
	Remove & Replace Toilet	1	E A	500.00	\$500	
	Texture Ceiling	555	S F	0.12	\$67	

03/04

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YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
16	Master Bed/Bath (cont)					
	Remove & Replace Insulation	555	SF	0.90	\$500	
	Remove, Strip, Refinish & Replace Doors	3	EA	100.00	\$300	
	Remove & Replace Trim	200	LF	3.00	\$600	
	Paint Walls, Ceilings & Trim	1,400	SF	0.70	\$980	
	New Underlayment & Carpet	390	SF	5.00	\$1,950	
17	Walk-in Closet					
	Remove Underlayment & Carpet	96	SF	0.50	\$48	
	Remove & Replace GWB Walls	320	SF	1.30	\$416	
	Remove & Replace GWB Ceiling	96	SF	1.60	\$154	
	Remove & Replace Light Fixtures	1	LS	30.00	\$30	
	Remove & Replace Insulation	416	SF	0.90	\$374	
	Texture Walls & Ceiling	416	SF	0.12	\$50	
	Remove & Replace Trim	60	LF	3.00	\$180	
	Paint Walls, Ceilings & Trim	416	SF	0.70	\$291	
	New Underlayment & Carpet	96	SF	5.00	\$480	
18	Roof					
	Remove & Replace Tile	6,000	SF	4.50	\$27,000	
	Remove & Replace Fireplace Cap	1	EA	400.00	\$400	
	Clean/Repair Gutters & Downspouts	150	LF	2.00	\$300	
	Paint Touchup	1	LS	300.00	\$300	
19	Driveway Pavers					
	Remove & Replace Pavers	2,400	SF			
	Power Wash Old Pavers	1,200	SF	6.00	\$7,200	
		1,200	SF	0.50	\$600	
20	Outbuilding/Garage					
	New Gas Heater	1	EA	1,000.00	\$1,000	
	Gas Piping & Vent	1	LS	300.00	\$300	
	Paint Garage Doors	5	EA	100.00	\$500	
21	Area next to Outbuilding/Garage					
	Break & Remove Concrete Pads	2,650	SF	1.50	\$3,975	

03/04

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YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
22	Water Well Remove & Replace Equipment	1	LS	2,610.00	\$2,610	John's Plumbing & Pumps
23	2nd Outbuilding/Garage Remove & Replace Metal Roof Repair or Replace Gutters & Downspouts Remove & Replace Concrete Slab in Front Misc Power Washing/Painting	3,700 4,800 200 360 1	SF SF LF SF LS	2.00 4.00 3.00 500.00	\$9,600 \$800 \$1,080 \$500	
24	Additional Buildings Demo & Remove Wood Frame Building Demo & Remove Foundation Concrete Demo & Remove Metal Building	2,400 600 600 1,800	SF SF SF SF	2.00 2.00 3.00	\$1,200 \$1,200 \$5,400	
25	Building Site Grade Excavated Site	1,100 1,100	SY SY	1.00	\$1,100	
26	Original Farmhouse Demo & Remove Wood Frame House Demo & Remove Concrete Foundation	1 See Above	LS	4,760.00 0.00	\$4,760 \$0	S & J Excavation
27	Lagoons Strip and Remove Manure Spread Manure on Fields Excavate & Load from Building Site for Fill Excavate, Haul, Dump & Compact at Lagoons Spread, Compact & Grade Lagoon Fill	10,000 1 See Above See Above See Above See Above	SF LS	26,200.00 0.00 0.00 0.00 0.00	\$26,200 \$0 \$0 \$0 \$0	S & J Excavation
28	Old Farm Garage Remove & Replace Metal Roofing Repair Gutters & Downspouts Repair/Replace Roof Strip Sheathing Remove Interior Electrical Wiring Misc Power Washing/Painting	820 1,120 1 1,120 1 1	SF SF LS SF LS LS	2.00 300.00 0.50 200.00 200.00	\$2,240 \$300 \$560 \$200 \$200	

03/04

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YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
29	2nd Farm Outbuilding	3,200	SF			
	Remove & Replace Metal Roofing	4,150	SF	2.00	\$8,300	
	New Concrete Slab	1,590	SF	3.00	\$4,770	
	New Wood Curbs	60	LF	10.00	\$600	
	New Locking Stanchions	60	LF	25.00	\$1,500	
	Misc Power Washing/Painting	1	LS	500.00	\$500	
30	Barn	2,800	SF			
	Add Beams/Shoring	1	LS	1,500.00	\$1,500	
	Remove & Replace Roof Shingles	5,600	SF	4.00	\$22,400	
	Remove & Replace Elec Power & Lighting	2,800	SF	1.50	\$4,200	
	New Exterior Concrete Slab	525	SF	3.00	\$1,575	
	New Locking Stanchions	50	LF	25.00	\$1,250	
	Misc Power Washing/Painting	1	LS	1,000.00	\$1,000	
31	Guest House	600	SF			
	Interior Framing, Plbg, Elec, Insul & Finish	1,200	SF	25.00	\$30,000	
	Exterior Window & Misc Painting	1	LS	300.00	\$300	
	Repair & Paint Roof	980	SF	1.50	\$1,470	
32	Clearing					
	Clear Fenceline	1	LS	13,800.00	\$13,800	S & J Excavation
	Clear Stumps & Small Trees	40	AC	2,500.00	\$100,000	S & J Excavation
	Rock Removal	100	CY	15.00	\$1,500	S & J Excavation
	Remove Old Roofing Supplies & Debris	1	LS	3,100.00	\$3,100	S & J Excavation
	Original Cleanup of Property	1	LS	6,400.00	\$6,400	S & J Excavation
33	Perimeter Fencing					
	Remove Old Fencing	10,000	LF	0.50	\$5,000	
	Repair Old Fencing	1	LS	1,000.00	\$1,000	
	Repair Old Gates	1	LS	500.00	\$500	
	New Barbed Wire, Steel/Wood Post Fencing	20,142	LF	2.00	\$40,284	
	New Metal Drive-Through Gates	5	EA	500.00	\$2,500	

03/04

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YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
34	Corrals					
	New Corrals	580	L F	12.00	\$6,960	
	New Corral Gates	4	E A	300.00	\$1,200	
35	Road & Driveway Fencing/Landscaping					
	Repair/Replace Wood Fencing Sections	2,000	L F	6.00	\$12,000	
	Paint Wood Fencing	2,000	L F	3.00	\$6,000	
	Landscaping	1	L S	2,226.00	\$2,226	Home Depot, Commodities Unlimited, Quality Rock, Home Base, Cascade Sand & Gravel
	Subtotal				\$501,866	
	Mobilization/Demobilization (1%)				\$5,019	
	Supervision, Tools & General Equipment (15%)				\$76,033	
	Debris Disposal				\$10,000	
	Subtotal Direct Construction Cost				\$592,917	
	Overhead & Profit (10%)				\$59,292	
	Construction Contingency (5%)				\$32,610	
	Subtotal				\$684,819	
	Bonds, Insurance, Business Taxes (3%)				\$20,545	
	Washington State Sales Tax (7.8%)				\$55,018	
	TOTAL CONTRACTED CONSTRUCTION COST				\$760,382	

NOTES:

- 1 Estimate does not include ongoing maintenance and repair or costs associated with hazardous materials, permits, fees, assessments, surveying, testing and inspection, design, owner administration, or other nonconstruction 'soft' costs.
- 2 Estimated costs reflect reasonable year 2000 prices (as an average for work accomplished from approximately 11/97 through 12/02) from published cost references and other recent construction projects. All items without comments are estimated contractor bid costs.

FILED
COURT OF APPEALS
DIVISION II
05 OCT 25 PM 12:39
STATE OF WASHINGTON
BY Via
DEPUTY

No. 33248-5-II

☐ SUPREME COURT

☒ COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

James M. and Shannon Young, *Petitioner*

v.

Judith Young, *Respondent*.

- ☐ Petition for Review
 - ☐ Appellant's Opening Brief
 - ☐ Respondent's Brief
 - ☐ Reply Brief of Appellant
 - ☒ Other: Declaration of Service
-
-

OWENS DAVIES, P.S.
Matthew B. Edwards
Attorney for Petitioners
WSBA No. 18332
PO Box 187 / 926-24th Way
Olympia, WA 98502
(360) 943-8320

ORIGINAL

On October 24, 2005, I delivered, via United States Postal Service, a true and correct copy of **Appellant's Opening Brief** to:

Timothy R. Gosselin
Burgess Fitzer, P.S.
1501 Market Street, Suite 300
Tacoma, WA 98402-3333

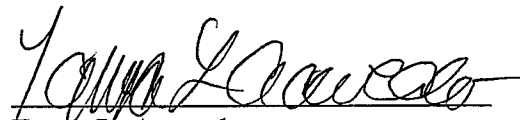
Alan Swanson
Law Offices of R. Alan Swanson
908 5th Ave SE
Olympia, WA 98506

In addition, on October 24, 2005, I delivered, via United States Postal Service, the original and one copy to the Court of Appeals, Division II, 950 Broadway, Suite 300, MS TB-06, Tacoma, WA 98402-4454.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 24 day of October, 2005, at Olympia, Washington.

OWENS DAVIES, P.S.


Tanya L. Acevedo